

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

AMERICAN AIRLINES, INC.,

Plaintiff,

v.

SKIPLAGGED, INC.,

Defendant.

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Civil Action No. 4:23-cv-00860-P

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**APPENDIX TO PLAINTIFF AMERICAN AIRLINES, INC.’S MOTION TO EXCLUDE  
EXPERT OPINIONS AND TESTIMONY OF ZAL PHIROZ, PHD  
AND BRIEF IN SUPPORT**

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In support of Plaintiff American Airlines, Inc.’s (“American”) Motion to Exclude Expert Opinions and Testimony of Zal Phiroz, PhD and Brief in Support, American submits the following materials:

<b><u>EX.</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>PAGE NOS.</u></b>
A	Declaration of Julia G. Wisenberg	App’x 001–03
A-1	Expert Report of Zal Phiroz, PhD, served by Defendant Skiplagged, Inc. (“Skiplagged”) on April 23, 2024	App’x 004–20
A-2	Declaration of Aktarer Zaman Submitted in Support of Skiplagged’s Motion to Dismiss American’s First Amended Complaint for Lack of Personal Jurisdiction and Alternative Request to Transfer Venue [Dkt. No. 22 at. 4–8], executed on October 2, 2023	App’x 021–26
A-3	Expert Rebuttal Report of Darin N. Lee, Ph.D., served by American on May 31, 2024 (Confidential)	App’x 027–91
A-4	Transcript of the deposition of Darin N. Lee, Ph.D., taken on July 11, 2024 (Partially Confidential)	App’x 092–140
A-5	Skiplagged’s Third Amended Objections and Responses to Plaintiff’s First Set of Interrogatories, served on January 12, 2024 (Partially Confidential)	App’x 141–52

Dated: August 26, 2024

Respectfully submitted,

/s/ Dee J. Kelly, Jr.

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I certify that on August 26, 2024, I served the foregoing document electronically in accordance with the Federal Rules of Civil Procedure.

/s/ Dee J. Kelly, Jr.

Dee J. Kelly, Jr.

# **Exhibit A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

AMERICAN AIRLINES, INC.,

Plaintiff,

v.

SKIPLAGGED, INC.,

Defendant.

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Civil Action No. 4:23-cv-00860-P

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**DECLARATION OF JULIA G. WISENBERG**

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STATE OF TEXAS

COUNTY OF TARRANT

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1. My name is Julia G. Wisenberg. I am over the age of 21 and competent to make this declaration as authorized under 28 U.S.C. § 1746. My business address is 201 Main Street, Suite 2500, Fort Worth, Texas 76102.

2. I make this declaration in support of Plaintiff American Airlines, Inc.'s ("American") Motion to Exclude Expert Opinions and Testimony of Zal Phiroz, PhD and Brief in Support.

3. Attached as Exhibit A-1 is a true and correct copy of the Expert Report of Zal Phiroz, PhD, served by Defendant Skiplagged, Inc. ("Skiplagged") on April 23, 2024.

4. Attached as Exhibit A-2 is a true and correct copy of the Declaration of Aktarer Zaman Submitted in Support of Skiplagged's Motion to Dismiss American's First

Amended Complaint for Lack of Personal Jurisdiction and Alternative Request to Transfer Venue [Dkt. No. 22 at 4–8], executed on October 2, 2023.

5. Attached as Exhibit A-3 is a true and correct copy of the Expert Rebuttal Report of Darin N. Lee, Ph.D., served by American on May 31, 2024.

6. Attached as Exhibit A-4 is a true and correct copy of the transcript of the deposition of Darin N. Lee, Ph.D., taken on July 11, 2024.

7. Attached as Exhibit A-5 is a true and correct copy of Skiplagged's Third Amended Objections and Responses to Plaintiff's First Set of Interrogatories, served on January 12, 2024.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 26, 2024.

  
\_\_\_\_\_  
Julia G. Wisenberg

# **Exhibit A-1**

**Expert Report of Zal Phiroz, PhD**  
**AMERICAN AIRLINES INC. v. SKIPLAGGED INC.**

**Introduction: Qualifications and Background**

Dr. Zal Phiroz is an established supply chain expert. His report applies his expertise to the issues as respects American Airlines' ("AA") suit against Skiplagged, Inc. ("Skiplagged") and AA's involvement in the supply chain relative to the airline industry and what has been referred to in the litigation and herein and in the industry, as hidden-city ticketing. In addition to having industry experience (Proctor & Gamble (NYSE:PG), and TELUS (NYSE:T), Dr. Phiroz has held a number of academic appointments (Harvard University, USC, MSU). Dr. Phiroz currently holds an appointment as A/Professor (Clinical) at University of California, San Diego.

As a practitioner, Dr. Phiroz has managed numerous international supply chain projects, involving billion-dollar P&G brands (Iams, Tide), as well as collaboration with major retailers (Wal-Mart, Target) analyzing consumer behavior. Various supply chain initiatives implemented by Dr. Phiroz within the area of consumer behavior, target market definition, demand simulation, shrink maintenance, and the application of retail disruptive innovation techniques, are still actively in place.

As a founding partner at Pier Consulting Group, Dr. Phiroz has consulted on projects involving simulated projection and forecasting, aggregate data analysis on competitive markets, regression techniques and clustering in determining the validity of demand projections and identification of key markets. To these ends, opportunity quantification, consumer behavior and demand analysis have been hallmarks of Dr. Phiroz's work.

In addition to holding a PhD in Supply Chain Management (Hierarchical decision making patterns for the placement of physical supply chain entities), Dr. Phiroz has earned an MBA, and is a double Computer Science graduate of the University of Windsor (BS[Hons], BCS). His C.V. is attached hereto as Appendix A. A list of cases in which he has been engaged to provide expert testimony is attached as Appendix B.

## **REPORT**

### **Role and Appointment**

I understand that my role in this case is to evaluate and opine on the impact of hidden-city fares on consumer behavior and demand using my qualifications, background, education, and experience. From a supply chain perspective, I am specifically offering an opinion on why hidden-city fares exist, how Skiplagged's business and operations model make use of such hidden-city ticketing in the airline travel market, and that the practice of hidden-city ticketing and the business model of Skiplagged which provides information and opportunities associated with hidden-city ticketing is justified in the marketplace and provides a substantial benefit to consumers of air travel.

In forming my opinion in this case, I have been presented and reviewed a number of articles and documents noted in Appendix C.

### **Observations and Opinions**

1. A supply chain is an umbrella term, which aims to explain a variety of functions and processes present in the sourcing, production, distribution, purchasing and consumption phases of a product. From a practical perspective, a supply chain describes the connectivity and collaboration between several entities (including service providers, and brokers). Supply chain design and functionality, is often driven by consumer behavior analysis. American Airlines is involved in a supply chain as it relates to consumer air travel.
2. Each supply chain has a unique design, with respect to product/service movement, responsibilities, roles etc. Often, a supply chain design includes multiple entities which fulfil the same role to a different consumer segment. An example of this might be multiple retailers (e.g. Walmart and Best Buy) selling the exact same product. While the product is the same, the targeted consumer market might differ (e.g. Walmart and Best Buy could attract different market segmentations), and as such the prices of particular products might also differ (e.g. Best Buy may sell the same product at a slightly higher price compared to Walmart).
3. Hidden-city ticketing is a term used to explain the practice of a traveler booking a flight which has one or more layovers, and simply ending their journey at a layover point instead of at their originally scheduled final destination. Often, hidden-city fares are more inexpensive than direct flights.

For example, a traveler might want to travel from New York to Chicago. A direct flight from New York to Chicago might cost \$500, however a flight from New York to Los Angeles with a layover in Chicago might cost \$300. If a traveler books the New York to



Los Angeles flight, and simply exits the airport in Chicago, they have used a hidden-fare strategy and would have arrived at their destination at a cost of \$300 (as opposed to \$500). Essentially, the traveler would not use the Chicago to Los Angeles portion of the plane ticket.

4. The concept of hidden-city ticketing is not new and existed long before Skiplagged existed. Since airlines generally do not use fixed pricing (i.e. pricing is often not based on each flight, but rather based on the point of departure and point of arrival), there are often economic advantages to passengers using hidden-fare tickets.
5. Skiplagged's business model is relatively straightforward. Skiplagged focuses on educating potential consumers on how they might be able to purchase plane tickets (and other travel-related services) through the carrier's website (or another travel sites) at a cheaper price and facilitates a consumer's purchase of a ticket.

Skiplagged does not purchase tickets from airline carriers, nor does it directly sell tickets to customers. It essentially points consumers to websites (e.g., AA.com or authorized intermediaries or travel sites). Consumers then purchase tickets from the actual seller (e.g., AA.com or various third-party websites).

6. Consumer behavior and purchasing habits are a core function of a supply chain and are driven by a number of factors which impact demand. One of the more influential drivers of demand is price. American Airlines (as well as most major airlines) use dynamic pricing strategies in the context of supply chain economics. Essentially, the same seat is available for sale at different prices depending on when the ticket is bought and where it is bought (e.g., kayak.com vs. priceline.com vs. aa.com directly).

American Airlines assumedly uses this strategy to extract an advantage by marketing the same product to multiple categories of consumers (multiple segments). As the demand for leisure travel is elastic (the quantity demanded of a product, changes greatly in response to changes in its price), this strategy is an example of how consumer behavior may be influenced.

7. From an operational perspective, Skiplagged is educating consumers of the disadvantages and shortcomings to them of American Airline's pricing strategy and providing them a reasonable opportunity to counter American Airlines' strategy for their benefit.

As American Airlines is aware of the fact that hidden-fare ticketing exists, there are a number of options American Airlines has to limit (or entirely eliminate) Skiplagged's

business advantage and hence eliminate the advantage such brings to consumers, for example:

- American Airlines could decide to overhaul its pricing strategy to use static pricing (as opposed to dynamic pricing). In doing so, there would not be an advantage for hidden-fare ticketing.
- American Airlines could publicize the fact that in its view, hidden fare ticketing is not allowed and threaten customers with fines for using hidden ticket fares. This would limit the advantage of Skiplagged's business model.
- Bring a suit such as this against Skiplagged to drive Skiplagged out of business.

8. American Airlines has been aware that the hidden-city ticket model exists for some time and assumedly chose not to intervene or act to eliminate Skiplagged's advantage until this suit was brought. This is likely due to the fact that eliminating hidden fare businesses, could potentially negatively impact American Airlines' overall business model (e.g., since price is a critical demand driver, it can be assumed that fewer customers would want to purchase flights at a fixed cost).

9. In the same way that customers might try to manipulate the system by finding the cheapest price, airlines also participate in manipulating the system by constantly - and without clear explanation - changing their prices and often charging different prices to passengers on the same flight.

This occurs both for passengers on the flight who have the same itinerary and for passengers on the flight who have different itineraries (e.g. those who are connecting to various destinations).

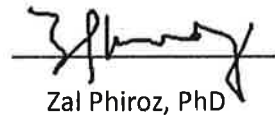
10. There is ample justification for the existence and use of hidden-city ticketing and fares in the marketplace and hence for the business of Skiplagged. The information provided on Skiplagged's website is free. Passengers can find the hidden-city ticket opportunities on Skiplagged and then book those same flights on AA.com, other airlines, Orbitz, or many other travel sites.

Skiplagged is providing a very valuable service to the consuming public by educating customers and displaying public information relevant to them, including the availability of hidden-city ticketing.

### **Basis for Opinion**

From an academic perspective, a supply chain is a network of businesses directly or indirectly involved in the development, distribution and sale of a product. While each supply chain will have a unique design and behave differently, consumer behavioral patterns are critical to the development of supply chain strategy and overall functionality. My industry experience, educational background, and academic involvement has led me to form the opinions shared within this report.

All opinions are given to a reasonable degree of professional certainty. I reserve the opportunity to supplement and/or amend these opinions if/when additional information becomes available. I also understand that I may be called to testify in rebuttal, or to respond to other opinions provided in this matter.



Zal Phiroz, PhD

# **APPENDIX A**

**INDUSTRY**

Founding Partner  
**Pier Consulting Group Inc.**

April 2010 - Present  
**Los Angeles, CA | Windsor, ON**

Collaboration with medium/large corporations on various areas of data analysis including sustainability, global logistics, supply chain management metrics, marketing segmentation and forecasted demand simulation.

- Direct marketing research and data analysis on competitive markets, cluster target demographics, growth opportunities and market niches.
- Predictive modeling and demand projection through various forms of regression analysis, meeting cross-functional cost optimization strategies.
- Collaboration with fortune 500 corporations including Procter & Gamble, DHL and Accenture.
- Consultation on quality control, manufacturing standards, and product liability (including topics related to consumer behavior, product differentiation and market trends).

Sr. Manager, Market Planning (North America)  
**Procter & Gamble Co.**

September 2007 - March 2010  
**Cincinnati, OH | Toronto, ON**

Managed national and international supply chain projects across the entire Procter & Gamble product portfolio. Responsible for market data analysis, demand forecasting and projection, national/international process customization, resource usage and high-level market analysis.

- Managed international supply chain processes and optimization initiatives across Procter & Gamble's \$2.9B pet care sector.
- Developed and managed forecasting initiatives leading to projected cost savings of \$14M.
- Led cross-functional US and Canadian analysis teams in the area of shrink. Recommended and successfully implemented strategies to reduce margin loss at partner retailers, warehouse and production plants, resulting in annual savings of \$23M across all banners.
- Initiated and managed national pilot programs for joint forecasting and supply chain customization with major partner retailers including Wal-Mart, Target and Shoppers Drug Mart.

Sr. Manager, Business Programs (Trade Marketing)  
**TELUS Communications Inc.**

October 2005 - May 2007  
**Toronto, ON**

Developed business programs within the TELUS data portfolio, interfacing with Product Development Direct Marketing, and Marketing Communications teams. Managed marketing objectives and developed specific sales programs using classification and projection regression simulation.

- Collaborated directly with sales channels (Independent Dealers, Enterprise, and Small/Medium Business) in establishing sales targets, distribution and promotional objectives.
- Managed entire data portfolio (\$1.8B) including Research in Motion, Palm and Motorola accounts.

## **Zal Phiroz MBA, PhD**

zphiroz@ucsd.edu | 647.393.1014 | San Diego California

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### **HIGHLIGHTS**

- Industry appointments at TELUS (NYSE: T), Procter & Gamble (NYSE: PG).
- Faculty appointments at UCSD, USC, Harvard. Inclusive Practice Fellowship at Harvard University.
- Qualifications: PhD, MBA, BS (CIS Hons.), BCS | CIPM, CISCN, CPSCN, CISCN

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### **ACADEMIA**

A/Professor and Lecturer, Innovation Technology and Operations  
**University of California, San Diego | Rady School of Management**

August 2019 - Present  
**San Diego, CA**

Instructed and developed senior level undergraduate, MSBA, MBA courses in Operations Management, Supply Chain Analytics and Business Analytics.

- Hosted C-suite speakers, and collaborated with industry partners (e.g. Flex, PetCo, Apple, Intel) ensuring course content alignment with market trends and industry recruitment standards.
- Developed course content integrating industry trends with analysis of various operations / supply chain areas (e.g. forecasting, demand projection and data mining).
- Alumni engagement sub-committee leader at the Institute for Supply Chain Excellence and Innovation (ISEI).
- Served as a faculty advisor in the Academic Internship Program (AIP).

A/Professor and Lecturer, Operations and Data Analytics  
**University of Southern California | Marshall School of Business**

October 2014 – August 2019  
**Los Angeles, CA**

Developed and instructed compulsory junior and senior level undergraduate, MS, MBA and OMBA courses in Operations Management, Management Consulting and Data Analytics for Decision Making.

- Developed data analysis modules on regression through JMP/R, focusing on clustering, classification, forecasting, queueing etc.
- Developed core Operations and Data Analysis courses for the undergraduate and initial Online MBA curriculum (ranked 5<sup>th</sup> in US News 2019 and 1<sup>st</sup> in Poets & Quants, 2018).

A/Professor and Lecturer, Supply Chain Management, Data Analysis (Term)  
**Harvard University | DCE - Graduate School of Arts & Sciences**

April 2013 – Present  
**Cambridge, MA**

Developed and instructed graduate courses within the area of Supply Chain Management and Operations. Implemented case analysis, and hosted several fortune 1000 C-suite guest speakers.

- Demonstrated case-work illustrating the practical value of decision tree modeling, logistic regression, linear programming and operations protocol.
- Initiated project collaboration through cases with Procter & Gamble, Unilever, Bombardier.

## EDUCATION AND PROFESSIONAL CREDENTIALS

PhD   Doctor of Philosophy (Dissertation: Hierarchical Decision Making Patterns for the Placement of Physical Supply Chain Entities) <b>University of Cape Town   Graduate School of Business</b>	July 2017 <b>Rondebosch, SA</b>
MBA   Master of Business Administration (International Marketing) <b>Wayne State University   Ilitch School of Business</b>	May 2005 <b>Detroit, MI</b>
BS (Hons)   Bachelor of Science (Honors, Computer Information Systems) <b>University of Windsor   School of Computer Science</b>	October 2003 <b>Windsor, ON</b>
BCS   Bachelor of Computer Science <b>University of Windsor   School of Computer Science</b>	June 2003 <b>Windsor, ON</b>
CIPM   Certified International Procurement Manager CISCM   Certified International Supply Chain Manager CISCPM   Certified International Supply Chain Planning Manager <b>International Purchasing and Supply Chain Management Institute</b>	June 2016 December 2015 March 2019 <b>Los Angeles, CA</b>

## SELECTED FELLOWSHIPS, HONORS AND AWARDS

Inclusive Practice Fellowship <b>Harvard University</b>	April 2023 <b>Cambridge, MA</b>
Directors Award for Excellence Global Fleet and Products <b>Amazon, Inc. (Global Logistics)</b>	August 2022 <b>Nashville, TN</b>
Deans Award for Community Development <b>University of Southern California</b>	June 2017 <b>Los Angeles, CA</b>
Annual Golden Apple Teaching Award for Faculty <b>University of Southern California</b>	August 2016 <b>Los Angeles, CA</b>

## SELECTED PRESENTATIONS AND PUBLICATIONS













- Phiroz, Z. N. (2022). Supply Chain Influences, Impacts and Perspectives. [Presentation]. American Gear Manufacturers Association, Palm Beach.
- Phiroz, Z. N. (2021). *Big Data: Application of Data in Defensive Merchandising and Shrink*. [Keynote Presentation]. Institute for Supply Management, Grand Rapids.
- Phiroz, Z. N. (2020). *How COVID-19 May Rattle Companies' Supply Chains*. Legal News & Analysis on Litigation, Policy: Law360. <https://www.law360.com/articles/1283697>
- Phiroz, Z. N. (2020). *Perspectives of Supply Chain Competitiveness— A Handbook*. Xanadu.
- Phiroz, Z. N. (2018). *Shrink Within the FMCG Space*. [Keynote Presentation]. Intermodal 2018, Sao Paulo.
















## **APPENDIX B**



**Prior Testimony and Deposition Experience**

**Dr. Zal Phiroz**

	Verbal Report	Written Report	Deposition
<u>Littlefield v. Nutribullet LLC et al.</u> 12/2017 – 9/2018			
<u>Skaggs v. Amazon.com Services Inc.</u> 5/2019 – 3/2022			
<u>Pacific Wine Distributors, Inc. &amp; Convoy Beverage Alliance v. J.F. Hillebrand USA, Inc., Sidekick Delivery, Inc. et al.</u> 3/2020 – 4/2021			
<u>Home Depot USA Inc. v. Columbia California Venture Industrial LLC et al.</u> 5/2021 – 7/2021			
<u>Butz v. Healthline Trading LLC</u> 8/2021 – 9/2021			
<u>I&amp;I Hair Corporation v. Beauty Plus Trading Co., Inc. et al.</u> 6/2021 – present (Case is ongoing)			
<u>Melendez v. 3M</u> 7/2021 – present (case is ongoing)			
<u>Tylt v. Wireless Advocates &amp; Costco Wholesale Corporation</u> 8/2021 – 8/2023			
<u>Zantac MDL- v. Pfizer, et al</u> 9/2021 – present (case is ongoing)			

	Verbal Report	Written Report	Deposition
<u>Kroger v. Waxman, et al</u> 2/2022 – 12/2022			
<u>Kearney v. Eckman et al.</u> 5/2022 - 4/2023			
<u>Martin v. Cintas et al.</u> 3/2022 - 9/2023			
<u>Lloyds Underwriters v. Rainbow Gold Inc. et al.</u> 6/2021 - 8/2023			
<u>McClellan v. Home Depot</u> 5/2023 - 7/2023			
<u>Lan Global v. Alchemy</u> 6/2023 - present (case is ongoing)			

# **APPENDIX C**

**Materials Presented to and Reviewed by Zal Phiroz, PhD**

1. *Declarations of Aktarar Zamen*, dated October 22, 2023 and December 15, 2023
2. *First Amended Complaint of American Airlines*, filed August 17, 2023
3. *Hidden City travel and its impact on airfare*, February 2022  
<https://www.sciencedirect.com/science/article/abs/pii/S0191261521002290>
4. *American Airlines Suing Skiplagged*, September 4, 2023 (Video)  
[https://www.2news.com/news/american-airlines-suing-skiplagged/video\\_22c7ac7b-f3a9-5cbf-9efb-b4f629005c2a.html](https://www.2news.com/news/american-airlines-suing-skiplagged/video_22c7ac7b-f3a9-5cbf-9efb-b4f629005c2a.html)
5. *American Airlines barred a 17-year-old from flying with the airline for 3 years because he tried to use a 'skiplagging' ticket, the teen's father says*, July 17, 2023  
<https://www.insider.com/skiplagging-american-airlines-banned-teenager-hidden-city-ticket-canceled-2023-7>
6. *Judge throws out United Airlines lawsuit against 22-year-old*, May 1, 2015  
<https://money.cnn.com/2015/05/01/investing/united-airlines-lawsuit-skiplagged/index.html>
7. *What is skiplagging? Everything about the controversial air travel hack airlines hate*, July 23, 2023  
<https://www.usatoday.com/story/travel/airline-news/2023/07/23/what-is-skiplagging-hidden-city-ticketing/70438246007/>
8. *What is 'skiplagging' and why do the airlines hate when you do it?* August 23, 2023  
<https://www.npr.org/2023/08/23/1194998452/skiplagging-airfare-flying-skiplagged-american-airlines>
9. *American Airlines sues a travel site to crack down on consumers who use this trick to save money*, August 18, 2023  
<https://apnews.com/article/american-airlines-lawsuit-skiplagging-tickets-905acda8ac5fe302238cefd63ac864e3>
10. *What is skiplagging? All about the travel hack airlines hate*. July 14, 2023

<https://www.washingtonpost.com/travel/tips/skiplagging-flights-airlines-policy/>

11. *American Airlines is suing Skiplagged, accusing the travel site of being a 'classic bait and switch', August 17, 2023*  
<https://www.businessinsider.com/american-airlines-sues-skiplagged-deception-fares-copyright-infringement-2023-8>
12. *Whether You Call It 'Skiplagging' or 'Hidden-City Travel,' It's Contentious, September 9, 2023*  
<https://www.nytimes.com/2023/08/08/travel/skiplagging-hidden-city-travel-layover.html>
13. *American Airlines sues travel website Skiplagged over ticket price 'loophole', August 19, 2023*  
<https://www.theguardian.com/business/2023/aug/19/american-airlines-sues-skiplagged-ticket-price-loophole>
14. *Skiplagging Isn't Likely to Stop Anytime Soon, Even if Airlines Fight It, September 5, 2023*  
<https://www.phocuswire.com/american-airlines-skiplagging-airfares-united-airlines>
15. *American Airlines Sues Skiplagged, August 30, 2023*  
<https://www.nerdwallet.com/article/travel/american-airlines-sues-skiplagged>
16. *Why American Airlines Is Suing A Popular Website That Finds Cheap Airfares, August 22, 2023*  
<https://www.forbes.com/sites/suzannerowankelleher/2023/08/22/american-airlines-lawsuit-skiplagged/?sh=1dbde3f93a5e>
17. *American Airlines Sues Airfare Site Skiplagged, August 20, 2023*  
<https://onemileatatime.com/news/american-airlines-sues-skiplagged/>
18. *American Airlines files lawsuit against Skiplagged, August 22, 2023*  
<https://www.goodmorningamerica.com/travel/story/american-airlines-files-lawsuit-skiplagged-102422969>

19. *American Airlines sues skiplagging site, claiming it tricks passengers*, August 21, 2023  
<https://www.washingtonpost.com/nation/2023/08/21/american-airlines-skiplagged-lawsuit/>
20. *What to know about skiplagging, the controversial tactic to save money on flights*, August 21, 2023  
<https://www.today.com/life/travel/skiplagging-explainer-rcna100923>
21. *American Airlines Sues Skiplagged, Alleging False Savings Promises and Deceptive Practices*, August 24, 2023  
<https://skift.com/2023/08/24/american-airlines-sues-skiplagged-alleging-false-savings-promises-and-deceptive-practices/>
22. *American Airlines Becomes Latest Airline To Sue Skiplagged*, August 19, 2024  
<https://simpleflying.com/american-airlines-skiplagged-lawsuit/>
23. *American Airlines Becomes Latest Airline To Sue Skiplagged*, January 11, 2024  
<https://www.nerdwallet.com/article/travel/skiplagged-flights-guide>
24. *5<sup>th</sup> Circuit Calls Out Judge's Sanction as Abuse of Discretion, Again*, November 7, 2023  
<https://www.law.com/nationallawjournal/2023/11/07/5th-circuit-calls-out-judges-sanction-against-lawyer-as-abuse-of-discretion-again/?slreturn=20240322155412>
25. *Skiplagging: Why some flyers love it and why airlines hate it*, November 24, 2023  
<https://www.cnn.com/travel/skiplagging-hidden-city-explainer/index.html>
26. *Don't persecute skiplaggers*, November 22, 2023  
<https://www.dallasnews.com/opinion/editorials/2023/11/22/airlines-stop-persecuting-skiplaggers/>

# **Exhibit A-2**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**AMERICAN AIRLINES, INC.,**

*Plaintiff,*

**V.**

**SKIPLAGGED, INC.,**

***Defendant.***

§§ 87(2)(b), 87(4-b), 87(5)(a) & (d), 87(6)(1) & (2)

**Civil Action No. 4:23-cv-00860-P**

**DECLARATION OF AKTARER ZAMAN SUBMITTED IN SUPPORT  
OF DEFENDANT SKIPLAGGED, INC.'S MOTION TO DISMISS  
PLAINTIFF AMERICAN AIRLINES, INC.'S FIRST AMENDED  
COMPLAINT FOR LACK OF PERSONAL JURISDICTION  
AND ALTERNATIVE REQUEST TO TRANSFER VENUE**

I, Aktarer Zaman, declare under the pains and penalties of perjury as follows:

1. At all relevant times in this case, I have been the Chief Executive Officer and founder of Defendant, Skiplagged, Inc. (“Skiplagged”). I submit this declaration in support of Skiplagged’s *Motion to Dismiss* this action for lack of personal jurisdiction over Skiplagged, and Skiplagged’s *Motion to Transfer Venue*. The information contained in this declaration is true and correct based on my personal knowledge. I am above the age of eighteen years and competent to testify.

2. I am a resident of the State of New York and have been so at all relevant times in this suit.

3. Skiplagged was incorporated in Delaware on March 3, 2015, and has always been headquartered in New York, New York. Skiplagged has been in business since that date.



4. No Skiplagged employee lives or works in Texas.

5. All Skiplagged employees knowledgeable about Skiplagged.com's use of public information concerning Plaintiff American Airlines, Inc. ("American") are located in New York City or work remotely from locations outside of Texas.

6. Skiplagged has no computer servers located in Texas. Skiplagged's website, Skiplagged.com, is hosted on computer servers in South Carolina and New York, and has no connection with or to Texas.

7. All Skiplagged documents are stored electronically and located on its computers in New York City or in Internet back-up storage through Google servers., none of which are located in Texas.

8. Skiplagged is not registered to do business in Texas, nor does Skiplagged have a bank account in Texas, nor own any other property in Texas.

9. No Skiplagged personnel have traveled to Texas in an attempt to further the Skiplagged business or goals or for any other business-related reason.

10. Skiplagged has not collected and does not have non-public information about airline routing and pricing, including American's routing and pricing. Instead it aggregates publicly available flight information from a variety of sources to inform consumers who visit Skiplagged.com over the Internet of cost-effective ways to travel.

11. Skiplagged has not and does not obtain any information about American's routes and fares or other American services from American's website or from American's computer servers. I have no knowledge as to the location of American's servers. Skiplagged obtains American flight and fare information from publicly available sources such as online travel

agencies, global distribution systems, and other travel metasearch engines. Skiplagged has also not obtained any of the alleged “American Marks” from American’s website.

12. Skiplagged.com provides a wide range of travel information to users over the Internet, including for persons interested in booking commercial airline flights. Skiplagged uses a unique algorithm to enable customers to identify affordable rates for airline or hotel accommodations and then refers the user to on-line travel agents to complete the bookings. In some instances Skiplagged.com offers a “Book Now” feature that offers users the opportunity to utilize Skiplagged.com to facilitate the user’s purchase of a given flight. When the user selects the “Book Now” option for an American flight the user is interested in booking, Skiplagged.com then prompts the user to input their passenger information and payment details through an on-line form. Skiplagged.com then automatically opens a Google Chrome browser in the Skiplagged computer servers to input user’s information into the booking Uniform Resource Locator or “URL” on AA.com on the user’s behalf. Skiplagged does not purchase or sell American tickets to anyone and does not claim that it is an agent of American or any other airline.

13. Skiplagged does not specifically direct its Internet-based travel informational services into Texas. Skiplagged engages in no advertising or marketing focused on Texas. Instead, Skiplagged’s services are offered to anyone anywhere in the World who has access to the Internet and who may prompt Skiplagged.com to provide information about airline routing and fares.

14. Skiplagged has never agreed to American’s terms and conditions or contract of carriage on the AA.com website or anywhere else. I have never read American’s user agreement or contract of carriage or gained access thereto.

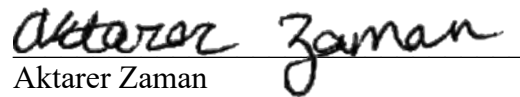
15. Nothing in Skiplagged’s workflow requires a visitor to Skiplagged.com to purchase the routing or fare published on Skiplagged.com. Skiplagged has no control over or even visibility into the pricing that the consumer might ultimately pay for any ticket purchased after a referral to an on-line travel agent. Skiplagged is not a party to any agreement that a customer may enter into with American or any other airline.

16. To my knowledge, Skiplagged has not induced anyone to breach their “agreements” (whatever those “agreements” may be) with any airline.

17. Litigating in Texas would be unduly and unfairly burdensome on Skiplagged. For example, it would require Skiplagged to maintain local counsel in Texas, require Skiplagged’s officers and employees to travel more than 100 miles from their homes and business in New York City to Texas for participation in the litigation, and require Skiplagged to litigate in a state where it has had no business contacts or presence.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

SUBSCRIBED TO, SWORN TO, AND EXECUTED on this 2nd day of October, 2023, in New York, New York.

  
Aktarer Zaman

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on October 2, 2023, a true and correct copy of the foregoing was served via the Court's ECF system upon all counsel of record as indicated:

Messrs. Dee J. Kelly, Jr., Lars L. Berg, and  
Tyson Lies and Ms. Julia G. Wisenberg  
Kelly Hart & Hallman LLP  
201 Main Street, Suite 2500  
Fort Worth, Texas 76102

Ms. Bina Palnitkar  
Greenberg Traurig LLP  
2200 Ross Avenue, Suite 5200  
Dallas, Texas 75201

Mr. Nathan J. Muyskens  
Greenberg Traurig, LLP  
2101 L Street, N.W., Suite 1000  
Washington, D.C. 20037

/s/William L. Kirkman  
William L. Kirkman

# **Exhibit A-3**

Withheld Due to Confidential Information  
Pending Motion for Leave to File Under Seal

# **Exhibit A-4**

CONFIDENTIAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

AMERICAN AIRLINES, INC.,

Plaintiff

vs.

) C.A. No. 4:23-CV-00860-P

SKIPLAGGED, INC.,

Defendant

CONFIDENTIAL

DEPOSITION OF DARIN LEE, PH.D.

THURSDAY, JULY 11, 2024

9:04 A.M. - 1:37 P.M.

GREENBERG TRAURIG LLP

ONE INTERNATIONAL PLACE

BOSTON, MASSACHUSETTS

REPORTED BY: Sandra A. Deschaine, CSR, RPR,  
CLR, RSA  
Job No. TX6782850

Page 1

CONFIDENTIAL

1 APPEARANCES:	1 JULY 11, 2024
2	2
3 ON BEHALF OF THE PLAINTIFF AND THE WITNESS:	3 9:04 a.m.
4 GREENBERG TRAURIG LLP	4
5 Nathan Muyskens, Esquire	5 Deposition of Darin N. Lee,
6 2101 L Street, N.W.	6 Ph.D., held at Greenberg Traurig LLP, One
7 Washington, DC 20037	7 International Place, Boston, Massachusetts,
8 202.331.3164	8 pursuant to Notice, before Sandra A.
9 nathan.muyskens@gtlaw.com	9 Deschaine, a Shorthand Reporter, Registered
10	10 Professional Reporter, Certified LiveNote
11 ON BEHALF OF DEFENDANT:	11 Reporter, and Notary Public in and for the
12 CONDON TOBIN SLADEK THORNTON NERENBERG PLLC	12 Commonwealth of Massachusetts.
13 Aaron Z. Tobin, Esquire	13
14 8080 Park Lane, Suite 700	14
15 Dallas, Texas 75231	15
16 214.265.3851	16
17 atobin@condontobin.com	17
18	18
19 Also Present: Gayle Ashton, videographer	19
20 Jeremy Ballew, Esquire	20
21 in-house counsel for American	21
22 Airlines	22
23	23
24	24
25	25
Page 2	Page 4
1 INDEX	1 PROCEEDINGS
2 EXAMINATION PAGE	2 THE VIDEOGRAPHER: Good morning.
3 Darin N. Lee, Ph.D.	3 We are now on the record. This is the
4 By Mr. Tobin ..... 6	4 videographer speaking, Gayle Ashton,
5	5 with Veritext Legal Solutions. Today's
6 EXHIBITS	6 date is July 11, 2024, and the time is
7	7 9:03 a.m. We are here at Greenberg
8 EXHIBIT DESCRIPTION PAGE	8 Traurig, 1 International Place, Boston,
9 Exhibit 1 Expert Rebuttal Report 6	9 Massachusetts, to take the video
10 Exhibit 2 Hidden city travel and 122	10 deposition of Darin N. Lee, Ph.D., in
11 its impact on	11 the matter of American Airlines, Inc.,
12 passengers, implications	12 versus Skiplagged, Inc.
13 for the traveling	13 Would counsel please introduce
14 public, Dr. Bija Vasigh	14 themselves for the record.
15	15 MR. TOBIN: Aaron Tobin for
16	16 Defendant Skiplagged.
17	17 MR. MUYSKENS: Nathan Muyskens for
18	18 American Airlines.
19	19 THE VIDEOGRAPHER: Would the court
20	20 reporter, Sandra Deschaine, please swear
21	21 in the witness.
22	22 DARIN N. LEE, PH.D., deponent,
23	23 having first been satisfactorily identified
24	24 by the production of his Massachusetts
25	25 driver's license and duly sworn by the Notary
Page 3	Page 5



<p>1 Public, was examined and testified as 2 follows: 3 (Exhibit 1, Expert Rebuttal Report of Darin 4 N. Lee, Ph.D., marked for identification.) 5 EXAMINATION 6 BY MR. TOBIN: 7 Q. Please state your full legal name? 8 A. Darin, D-a-r-i-n, Norman, L-e-e. 9 Q. Dr. Lee, my name is Aaron Tobin. 10 You understand I represent the defendant 11 Skiplagged in this lawsuit that American 12 Airlines has brought? 13 A. I do. 14 Q. Okay. And I believe today was the 15 first time we had a chance to meet; is that 16 correct? 17 A. That's correct. 18 Q. I assume -- I've reviewed your 19 report and your resumé and your CV, and it 20 sounds like you're experienced in this. I 21 assume you've had your deposition taken a 22 number of times? 23 A. I have, yes. 24 Q. And do you need me to go over any 25 of the rules or you kind of understand the</p> <p style="text-align: right;">Page 6</p>	<p>1 issued in this case along with the appendix 2 that's attached to the report? 3 A. It does. I would say that the 4 quality of the printing on some of the 5 exhibits is a little hard to read, but yeah, 6 it is. 7 Q. Okay. If you have trouble reading 8 anything or figuring it out today, let me 9 know and we'll stop and try to see if we can 10 fix that for you. Okay? 11 A. Okay. 12 Q. Does that contain all of the 13 opinions that you intend to offer in this 14 case? 15 A. As I sit here currently, yes. 16 Q. Okay. Are you planning on 17 offering any opinions that are not contained 18 in that exhibit as you sit here today? 19 A. I don't expect to, but I haven't 20 had any discussions as to what I'm going to 21 be asked to testify at trial, if I'm asked to 22 testify. 23 Q. Okay. Are there any corrections 24 or omissions or mistakes in your report that 25 you need to address right now?</p> <p style="text-align: right;">Page 8</p>
<p>1 format of what's going to happen today? 2 A. I understand the rules as I've 3 been deposed in the past. 4 Q. Okay. Great. 5 One thing I'll tell you, because 6 all lawyers are different, I am very lax 7 about breaks. If you want to take a break 8 for any time, any reason, you just let me 9 know and we'll do it. 10 The only thing I would ask if I've 11 got a question on the table, just please 12 finish answering the question and then we're 13 good to go. Okay? 14 A. Sounds good. 15 Q. Same thing about lunch. I'm 16 really at your discretion. If you want to 17 work through lunch -- I don't anticipate 18 we're going to be here all day, but if you 19 want to work through lunch or grab a quick 20 lunch or take a longer, more leisurely lunch, 21 your preference. I really don't care. 22 A. Sounds good. 23 Q. So I placed in front of you 24 Exhibit 1. Does that appear to be a true and 25 accurate copy of your report that you've</p> <p style="text-align: right;">Page 7</p>	<p>1 A. Actually, I saw one typo last 2 night as I was reading the report. It was 3 just very, very minor, but on paragraph 11, I 4 think it was -- 5 Q. Paragraph 11, you said? 6 A. I think it was paragraph 11 where 7 it said "20 years ago." So it's on the 8 second line of the paragraph 11, it says, "As 9 shown in Exhibit 2, 20 years ago," that 10 should say 30 years ago. It's referring to 11 the first date of appointment, which is 1993, 12 2023 to 1993. 30 years not 20 years. 13 Q. That's helpful. Thank you. 14 Are there any other corrections, 15 mistakes or omissions that need to be made to 16 your report? 17 A. Not that I'm aware of, no. 18 Q. I want to -- and we'll get into 19 more of the details of your report. But I 20 want to just, at a high level, kind of make 21 sure I understand where you're coming from 22 and of course my client doesn't necessarily 23 agree with everything you're saying, but I at 24 least want to understand what your opinions 25 are. So we'll just take it at high level</p> <p style="text-align: right;">Page 9</p>

<p>1 first. Okay?</p> <p>2 A. Sure.</p> <p>3 Q. If I understand some of the points</p> <p>4 you're making in your opinion, is that if my</p> <p>5 client were to go away and not exist, you do</p> <p>6 not believe that that would lead the market</p> <p>7 to being any more susceptible to monopoly or</p> <p>8 monopolistic behaviors by American Airlines;</p> <p>9 is that fair?</p> <p>10 A. Well, I'm not sure I agree with</p> <p>11 the premise of your question, in that I might</p> <p>12 assume that they already have some type of</p> <p>13 monopolistic power. You know, so as I state</p> <p>14 fairly clearly in my report, my report is</p> <p>15 only responding to primarily the report of</p> <p>16 Dr. Vasigh, and I think he makes some</p> <p>17 incorrect assumptions about how the airline</p> <p>18 industry operates and the competitive state</p> <p>19 of it, and for the reasons I outline in my</p> <p>20 report, I think those assumptions are</p> <p>21 incorrect.</p> <p>22 Q. Okay.</p> <p>23 MR. TOBIN: Objection,</p> <p>24 nonresponsive.</p> <p>25 BY MR. TOBIN:</p> <p style="text-align: right;">Page 10</p>	<p>1 A. There's a whole set of what I</p> <p>2 refer to as lower-cost carriers --</p> <p>3 Q. Okay.</p> <p>4 A. -- which includes low-cost</p> <p>5 carriers, ultra-low-cost carriers as well as</p> <p>6 lower cost and network carriers.</p> <p>7 Q. Okay. And you believe the</p> <p>8 entrance of the market of those types of</p> <p>9 carriers has made the industry more</p> <p>10 competitive.</p> <p>11 Am I understanding that</p> <p>12 correctly?</p> <p>13 A. Well, it's a combination of the</p> <p>14 expansion of those carriers, of the entry of</p> <p>15 those carriers, the addition of new carriers,</p> <p>16 and the competitive response they've elicited</p> <p>17 from network carriers.</p> <p>18 Q. And you believe all those things</p> <p>19 has made the industry more competitive over</p> <p>20 the years?</p> <p>21 A. Oh, that definitely is a huge part</p> <p>22 of it, yes.</p> <p>23 Q. Okay. And so, I think if I</p> <p>24 understand your point, is that if the</p> <p>25 hidden-city ticketing is not around, the</p> <p style="text-align: right;">Page 12</p>
<p>1 Q. My question, though, is just</p> <p>2 generally -- let me ask you, if Skiplagged</p> <p>3 were not to exist, do you believe that that</p> <p>4 could lead the market to being more</p> <p>5 susceptible to monopolistic-type behavior?</p> <p>6 A. I don't think so, no.</p> <p>7 Q. Okay. And if I understand in your</p> <p>8 report kind of some of the basis for what</p> <p>9 you're saying, it's because you believe the</p> <p>10 industry has become more competitive over the</p> <p>11 years; is that fair?</p> <p>12 A. Well, I -- the data demonstrated</p> <p>13 that it has been. So, I mean, all of the</p> <p>14 indicia of competition in terms of things</p> <p>15 like prices, output, the industry has become</p> <p>16 incredibly competitive, that's correct.</p> <p>17 Q. You highlight part of the reason I</p> <p>18 think you believe that the industry has</p> <p>19 become more competitive is because you</p> <p>20 believe these low-cost carriers and these --</p> <p>21 I'm sorry -- what's the term? -- ultra low</p> <p>22 cost, or -- there's another level of low-cost</p> <p>23 carriers behind just the low-cost --</p> <p>24 A. There's a --</p> <p>25 Q. -- carriers?</p> <p style="text-align: right;">Page 11</p>	<p>1 consumer has a number of options.</p> <p>2 Is that one of the points you're</p> <p>3 trying to make?</p> <p>4 A. You know, again, I would defer to</p> <p>5 my report, and my report is responding to</p> <p>6 some claims about the nature of competition</p> <p>7 in Dr. Vasigh's report, and I don't think --</p> <p>8 he didn't see -- the availability of</p> <p>9 hidden-city ticketing is needed to ensure</p> <p>10 that the industry is competitive.</p> <p>11 Q. Okay. And I understand. I've</p> <p>12 read your report. I promise I have.</p> <p>13 But this is my chance to kind</p> <p>14 understand and discover what you might be</p> <p>15 talking about at trial. So I'm going to ask</p> <p>16 you some questions that deal with your</p> <p>17 report, but, you know, not everything is</p> <p>18 going to come verbatim from your report so I</p> <p>19 need to understand what you're going to say</p> <p>20 at trial. Is that fair?</p> <p>21 A. I understand.</p> <p>22 (Jeremy Ballew entered the deposition.)</p> <p>23 BY MR. TOBIN:</p> <p>24 Q. So you say that all of these</p> <p>25 things you talked about has led to the</p> <p style="text-align: right;">Page 13</p>

<p>1 industry becoming more competitive, and I 2 just want to make sure I understand because 3 that -- you believe that gives the consumer 4 choices, right? 5 A. Choices are an important part of 6 competition. 7 Q. And you believe, as we sit here 8 right now, the consumer does have choices? 9 A. Yes, they have choices. 10 Q. And so if hidden-city ticketing 11 options are not around, if I understand, part 12 of your point is that the consumer could 13 choose to fly on a low-cost carrier, correct? 14 A. Consumers have the option to fly 15 on low-cost carriers, that's correct. 16 Q. Okay. Or they can fly on an 17 ultra-low-cost carrier, right? 18 A. They can fly on a ultra-low-cost 19 carrier. 20 Q. They could shop the market and 21 possibly fly on another carrier, another 22 major carrier other than American Airlines, 23 right? 24 A. There's many choices, yes. 25 Q. Okay. They could try to time the</p> <p style="text-align: right;">Page 14</p>	<p>1 that it's impossible for you or impossible 2 for me to predict how each of those consumers 3 would react or what choices they would make 4 if hidden-city ticketing is not around, 5 correct? 6 A. Well, I think that if you were 7 asking me if I could tell you what each 8 individual would do, I can't put myself in 9 the shoes of each individual. I can tell you 10 what I would do, and I can tell you what a 11 lot of people that travel would do. But I 12 can't sit here and tell you that I know what 13 each individual person would choose. 14 Q. Okay. Now, I want to make sure I 15 understand kind of the breadth of your 16 opinion and how far you are going, so to 17 speak. 18 I don't think you're opining on 19 whether there is actually a market for 20 hidden-city ticketing or not; is that 21 correct? 22 A. Are you referring to, like, a 23 relevant market and antitrust framework, is 24 that what you're -- 25 Q. Well, I'm -- not in a legal sense,</p> <p style="text-align: right;">Page 16</p>
<p>1 market because ticketing prices even for a 2 specific carrier vary day-to-day or 3 month-to-month, correct? 4 A. They vary, that's correct. 5 Q. So they can try to time the market 6 if they wanted to, right? 7 A. I suppose they could. 8 Q. And they don't have to fly, they 9 could take another mode of transportation or 10 just choose not to fly all together. Is that 11 part of the choices that you believe the 12 consumer has? 13 A. Not flying is always an option. 14 Q. And I think, from your years of 15 experience, you at least understand that, you 16 know, that's a consumer-specific decision, 17 depending on what's going on in their life, 18 the timing of their events or the budget that 19 they're on, it's very individualistic as to 20 how each of those consumers would go through 21 that decision-making process. Fair? 22 A. I would generally agree that many 23 travel choices are made at the individual 24 level. 25 Q. And so I think you would agree</p> <p style="text-align: right;">Page 15</p>	<p>1 just in a lay sense. 2 Maybe I'll just ask you. 3 Do you believe -- I mean, you've 4 seen that my client actually has sales, 5 right? 6 A. I purchased a ticket myself, so 7 they do have sales, yes. 8 Q. All right. And hidden-city 9 ticketing is not something that's brand new. 10 It's been around for a long time, the concept 11 at least, right? 12 A. That is correct, it's been around 13 for a while. 14 Q. Okay. And if I represent to you 15 that my client didn't even start doing 16 business of any form until 2013, is at least 17 your understanding that hidden-city ticketing 18 or the practice has been around before my 19 client started doing business in 2013? 20 A. I understand that hidden-city 21 ticketing has been around since prior to 22 2013. 23 Q. Okay. And you understand that my 24 client is not the only one in the market of 25 hidden-city ticketing, there are other</p> <p style="text-align: right;">Page 17</p>

<p>1 businesses that practice -- either similar 2 practices or akin practices to what my client 3 does. You understand that at least? 4 A. I'm aware of at least one other 5 website that promotes hidden-city ticketing, 6 though I don't think they do on American 7 anymore. 8 Q. So at least you understand, you 9 may not agree with the practice, but you at 10 least understand there's a market out there 11 for hidden-city ticketing? 12 A. I just don't know what you mean 13 when you refer to it as a market. I know 14 that there's websites out there that promote 15 hidden-city ticketing, so I would agree with 16 the point that there are -- you're not the 17 only one out there that's doing it. 18 Q. And you'd at least agree that 19 there are consumers out there that are 20 consuming hidden-city ticketing services 21 provided by my client and others? 22 A. Yes, there are consumers who have 23 purchased hidden-city ticketing, yes. 24 Q. What did you do to prepare for 25 your deposition today?</p> <p style="text-align: right;">Page 18</p>	<p>1 THE WITNESS: And I chatted with 2 him for a few minutes. 3 BY MR. TOBIN: 4 Q. Who was that? 5 A. Eric Amel. 6 Q. How do you spell the last name? 7 A. A-m-e-l. 8 Q. Is Mr. Amel in your office? 9 A. He is, yes. 10 Q. And were you individually retained 11 to give a report or was a business or a firm 12 that you work with retained? 13 A. Compass Lexecon, which is my 14 employer, was retained. 15 Q. Did you meet or discuss 16 preparations for your deposition with anyone 17 else besides Mr. Amel and your counsel? 18 A. No, I did not. 19 Q. How long did you spend reviewing 20 documents to prepare for your deposition 21 today? 22 A. Well, see, today is what -- today 23 is Thursday. I spent maybe 20 hours in 24 total, Monday, Tuesday, Wednesday. 25 Q. How long have you been with</p> <p style="text-align: right;">Page 20</p>
<p>1 A. I reviewed my report. I read 2 Dr. Vasigh's report, Dr. Phiroz's report, and 3 I met with counsel yesterday for maybe 90 4 minutes. 5 Q. Did you review any other documents 6 or data for your preparation of your 7 deposition today? 8 A. I looked at the Complaint. I, you 9 know, I went through my report and looked at, 10 you know, the exhibits and some of the 11 underlying information. 12 Q. Okay. Anything else? 13 A. I think that, as I sit here right 14 now, that's pretty much -- I reviewed my 15 report and the materials I relied upon. 16 Q. Now, I don't want to know anything 17 you talked to with your counsel. But other 18 than that, did you talk to anybody else in 19 preparing for your deposition today? 20 A. I have one individual that 21 assisted me in my direct -- worked under my 22 direction in my report and I chatted -- 23 THE STENOGRAPHER: Sir, you're 24 kind of dying out at the end. 25 "And I chatted with"?</p> <p style="text-align: right;">Page 19</p>	<p>1 Compass Lexecon? 2 A. I believe I joined Compass Lexecon 3 in February of 2011. 4 Q. And pardon these questions, but I 5 ask of every witness I ever depose. 6 Have you ever filed for bankruptcy 7 or any type of insolvency proceeding? 8 A. I have not. 9 Q. Have you ever been charged, 10 arrested or convicted of a crime other than a 11 minor traffic offense? 12 A. I have not. 13 Q. Are you on any medications or do 14 you have any conditions today that would 15 affect your ability to give truthful 16 testimony? 17 A. I'm not. 18 Q. Are you on any medications or do 19 you have any conditions that would affect 20 your memory at all? 21 A. I take a statin, but that's it. 22 Q. And it doesn't affect your recall? 23 A. Not that I -- not that I know of. 24 Q. When were you retained? 25 A. To the best of my recollection, as</p> <p style="text-align: right;">Page 21</p>

<p>1 I sit here today, sometime in earlier May.  2 Q. And were you retained by a law  3 firm or by American Airlines? When I say  4 "you," you understand I'm talking about the  5 Compass?  6 A. I believe our retention letter is  7 with American Airlines, but it -- you know,  8 largely the reach out came from the  9 attorneys.  10 Q. Okay. Was that Greenberg Traurig  11 or Kelly Hart?  12 A. Could have been both. I mean, it  13 could have been -- I think the initial call  14 had both Kelly Hart and Greenberg.  15 Q. What is your rate?  16 A. \$1040 per hour.  17 Q. What is Mr. Amel's rate?  18 I'm sorry. Yeah, Mr. Amel.  19 A. I don't know it off my heart, but  20 I suspect it is in the maybe 750-ish range  21 per hour.  22 Q. Did anyone work on this project  23 that you're here to testify other than you  24 and Mr. Amel?  25 A. No, we were the only two.</p> <p style="text-align: right;">Page 22</p>	<p>1 correct?  2 A. That is correct.  3 Q. And how many times have you been  4 retained by American Airlines?  5 A. Over what period of time?  6 Q. Ever since you started doing this?  7 A. I couldn't tell you sitting here  8 right now. I'd defer to my CV, which lists  9 all of the engagements I provided testimony  10 in. But I've been retained by American on  11 multiple occasions, as with other airlines.  12 Q. More than ten times?  13 A. Over the course of my career?  14 Q. Yes.  15 A. Yes.  16 Q. More than 25 times?  17 A. I would need to go and count, but  18 it's possible.  19 Q. Your CV is attached as -- or is  20 attached to Exhibit 1, correct?  21 A. It is.  22 Q. And your prior expert retention is  23 part of that, correct?  24 A. It is.  25 Q. So every time you've been retained</p> <p style="text-align: right;">Page 24</p>
<p>1 Q. How much have you billed so far?  2 A. I don't know, as I sit here right  3 now.  4 Q. Do you know how much you collected  5 so far?  6 A. I don't know as I here today right  7 now.  8 Q. Is it over \$50,000?  9 A. Collected?  10 Q. I'm sorry. Charged.  11 A. Over 50,000. I suspect it is,  12 yes.  13 Q. Is it over a hundred thousand  14 dollars?  15 A. Probably.  16 Q. Is it over \$250,000?  17 A. I don't think so.  18 Q. Do your rates change at all  19 depending on whether you give testimony or is  20 the rate static?  21 A. My rate is the same regardless of  22 testimony or not.  23 Q. Okay. Now, you've been retained  24 by American Airlines -- you or your firm have  25 been retained by American Airlines before,</p> <p style="text-align: right;">Page 23</p>	<p>1 by American Airlines, you or someone you're  2 working on behalf of is reflected in  3 Exhibit 1; is that fair?  4 A. Well, I think Exhibit 1 lists  5 testimony, and so there are instances where I  6 may have been retained by a client to provide  7 nontestifying consulting, but in terms of  8 engagements where I've offered expert  9 testimony, my CV is quite complete, I  10 believe.  11 Q. I'm looking at page A-6, which is  12 Appendix Exhibit 1.  13 Do you see that?  14 A. A-6?  15 Q. Yes.  16 A. Yes. Yes, I do see that, yeah.  17 Q. Okay. Like, for instance, about  18 two-thirds of the way down the page, you see  19 where expert report in a matter between a  20 U.S. carrier, that bullet point?  21 A. Hold on. Page A-6, expert report.  22 Yes, I do see that, yes.  23 Q. Okay. That seems to indicate to  24 me that there may not have been any testimony  25 and that was just a report in that particular</p> <p style="text-align: right;">Page 25</p>



<p>1 case.</p> <p>2 A. In that particular instance -- I'm</p> <p>3 just trying to recall why I had to not</p> <p>4 disclose -- the client in that matter asked</p> <p>5 me not to disclose the name, their name, and</p> <p>6 I filed an expert report, but I was neither</p> <p>7 deposed nor was I asked to provide live</p> <p>8 testimony in court.</p> <p>9 Q. Okay. And it seems like there are</p> <p>10 a couple of instances in there where -- at</p> <p>11 least in this section A attached to your</p> <p>12 report, where testimony is not listed.</p> <p>13 That's why I thought this might have been</p> <p>14 every retention as opposed to just every</p> <p>15 retention that involves testimony.</p> <p>16 A. So when you refer to testimony,</p> <p>17 you're referring to, like, live oral</p> <p>18 testimony?</p> <p>19 Q. Yes. Either in a deposition or a</p> <p>20 court proceeding or at trial or an</p> <p>21 arbitration?</p> <p>22 A. Okay. Yeah. So this would</p> <p>23 include all of the above, all of the live</p> <p>24 testimony, as you just described, as well as</p> <p>25 expert reports.</p> <p style="text-align: right;">Page 26</p>	<p>1 A. It was not.</p> <p>2 Q. Okay. If we look at page A-9,</p> <p>3 five bullet points up where it says, "Provide</p> <p>4 expert consulting services to several major</p> <p>5 U.S. mainline and regional airlines."</p> <p>6 Do you see that bullet point?</p> <p>7 A. I do, yes.</p> <p>8 Q. When you say "U.S. mainline and</p> <p>9 regional airlines," was American Airlines or</p> <p>10 any of its affiliates part of that</p> <p>11 representation?</p> <p>12 A. It would be included, as would</p> <p>13 most other carriers that went through Chapter</p> <p>14 11 and Delta, Northwest, United, US Airways,</p> <p>15 Comair, Pinnacle. There's a whole set of</p> <p>16 airlines throughout the decade after 9/11</p> <p>17 that went bankrupt, and I was working --</p> <p>18 providing consulting to a number of them.</p> <p>19 Q. And American was one of those?</p> <p>20 A. They were one of them, yeah.</p> <p>21 Q. And that was in connection with</p> <p>22 American or its affiliates' Chapter 11</p> <p>23 bankruptcy proceeding?</p> <p>24 A. That's correct.</p> <p>25 Q. And then a couple more bullet</p> <p style="text-align: right;">Page 28</p>
<p>1 Q. Okay. Got it.</p> <p>2 So if you'd been retained by</p> <p>3 American Airlines, regardless of who you were</p> <p>4 working for, if you had been retained as an</p> <p>5 expert witness, regardless of whether you</p> <p>6 gave testimony, if you at least gave a</p> <p>7 report, it is identified in Appendix A to</p> <p>8 your report; is that fair?</p> <p>9 A. To the best of my knowledge, I try</p> <p>10 to keep this complete, yes.</p> <p>11 Q. Okay. I mean, since we're there,</p> <p>12 let's go ahead and talk about this section.</p> <p>13 Bear with me for a minute.</p> <p>14 So let's go back to A-6, that</p> <p>15 bullet point we were talking about.</p> <p>16 A. A-6. Okay.</p> <p>17 Q. The same bullet point where it</p> <p>18 says, "Expert report in a matter between a</p> <p>19 U.S. carrier and one of its represented</p> <p>20 employee groups." (as read)</p> <p>21 Do you see that bullet point?</p> <p>22 A. I do see that, yeah.</p> <p>23 Q. Okay. Can you at least tell me if</p> <p>24 that U.S. carrier that you referred to was</p> <p>25 American Airlines or any of its affiliates?</p> <p style="text-align: right;">Page 27</p>	<p>1 points down, where it says, "Analysis of</p> <p>2 industry, economic and antitrust issues of</p> <p>3 three major U.S. airlines," was American one</p> <p>4 of those?</p> <p>5 A. No, I don't believe they were,</p> <p>6 actually.</p> <p>7 Q. At the bottom it says, "Provided</p> <p>8 valuation "of a major carrier's U.S. slot</p> <p>9 holdings."</p> <p>10 Would that major carrier have been</p> <p>11 American or any of its affiliates?</p> <p>12 A. I do not believe that American was</p> <p>13 that carrier, no.</p> <p>14 Q. Moving on on the next page, A-10,</p> <p>15 it says, "Analysis of industry and economic</p> <p>16 and antitrust issues," third bullet point</p> <p>17 down, of a major U.S. airline. (as read)</p> <p>18 Would that major U.S. airline have</p> <p>19 been American?</p> <p>20 A. No.</p> <p>21 Q. Moving a few more bullet points</p> <p>22 down to "Industry analysis for a major</p> <p>23 airline in connection with post-9/11</p> <p>24 workforce reductions," would that major</p> <p>25 airline have been American or any of its</p> <p style="text-align: right;">Page 29</p>

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<p>1 affiliates?</p> <p>2 A. No, it was not.</p> <p>3 Q. I've got a few bullet points I'm</p> <p>4 going to ask --</p> <p>5 A. Sure.</p> <p>6 Q. -- the same question on.</p> <p>7 So I would move down to the bullet</p> <p>8 point that starts, "Authored whitepaper on</p> <p>9 behalf of major U.S. airline."</p> <p>10 A. Sorry. What page are you on, sir?</p> <p>11 Q. I'm still on A-10.</p> <p>12 A. A-10. Okay. "Authored"?</p> <p>13 Q. Whitepaper on behalf --</p> <p>14 A. Oh, I see that, yeah.</p> <p>15 Q. Was that American Airlines or any</p> <p>16 of its affiliates?</p> <p>17 A. I believe that was one, yes.</p> <p>18 Q. Moving down, I believe, the fourth</p> <p>19 bullet point from the bottom, as well as the</p> <p>20 third bullet point from the bottom, also talk</p> <p>21 about "Analysis" and -- "of industry and</p> <p>22 economic issues for a major U.S. airline."</p> <p>23 The major U.S. airline referred to</p> <p>24 in either of those bullet points, was that</p> <p>25 American or any of its affiliates?</p> <p style="text-align: right;">Page 30</p>	<p>1 Northwest Airlines.</p> <p>2 Q. And what do you mean when you say</p> <p>3 "hub dominance"?</p> <p>4 A. Allegations of hub dominance?</p> <p>5 Q. Yes.</p> <p>6 A. Well, as I discuss in my report,</p> <p>7 back many years ago, the -- there were --</p> <p>8 there was a pretty lively debate amongst</p> <p>9 those that studied the airline industry about</p> <p>10 hub pricing, you know, the pricing that</p> <p>11 airlines paid -- I'm sorry -- the prices that</p> <p>12 airlines would charge in hubs versus a</p> <p>13 non-hub.</p> <p>14 Q. When you say "hub," what do you</p> <p>15 mean?</p> <p>16 A. Well, a hub as I describe in my</p> <p>17 report is a central part -- a hub-and-spoke</p> <p>18 carriers' network, so there's kind of a</p> <p>19 network architecture that's used by some</p> <p>20 carriers known as hub-and-spoke networks.</p> <p>21 And the hub is essentially the central focal</p> <p>22 point where flights are funneled into the hub</p> <p>23 so that people can make connections to other</p> <p>24 places.</p> <p>25 Q. And when was this analysis done</p> <p style="text-align: right;">Page 32</p>
<p>1 A. So are you talking about the third</p> <p>2 from the bottom and the second from the</p> <p>3 bottom?</p> <p>4 Q. It depends -- you see there's a</p> <p>5 bullet point under "impact of COVID-19," so</p> <p>6 whether you count -- if you count that one,</p> <p>7 I'm talking about the fourth and the third</p> <p>8 from the bottom.</p> <p>9 A. On A-10?</p> <p>10 Q. On A-10?</p> <p>11 A. On A-10, third and fourth. So the</p> <p>12 one that says, "Analysis of industry and</p> <p>13 economic issues for a major airline in a</p> <p>14 predatory pricing suit"?</p> <p>15 Q. Correct.</p> <p>16 A. That was not American Airlines,</p> <p>17 no.</p> <p>18 Q. What about the next one that is</p> <p>19 related to and responsive allegations of hub</p> <p>20 dominance?</p> <p>21 A. No, that was not American.</p> <p>22 Q. Who was that for?</p> <p>23 A. I think that was, if I recall,</p> <p>24 part of my CV is dating back to probably the</p> <p>25 late '90s or the early 2000s, I think it was</p> <p style="text-align: right;">Page 31</p>	<p>1 that you refer to in this bullet point on</p> <p>2 page A-10 on your report?</p> <p>3 A. I can't tell you precisely as I</p> <p>4 sit here right now, but my suspicion,</p> <p>5 especially given where this sits on my CV,</p> <p>6 which is generally organized chronologically,</p> <p>7 is in the, as I said, the late '90s or early</p> <p>8 2000s.</p> <p>9 Q. And have you testified on hub</p> <p>10 dominance before, other than this analysis</p> <p>11 that you identify?</p> <p>12 A. Have I testified on hub dominance?</p> <p>13 I'm just trying to think because I've</p> <p>14 testified many times. I'm just trying to</p> <p>15 think if there's a time specifically where</p> <p>16 that topic came up. I don't know if I've</p> <p>17 specifically testified -- I've testified</p> <p>18 numerous times on the competitive state of</p> <p>19 the industry; and as I describe in my report</p> <p>20 and as we discussed this morning, at points</p> <p>21 in time in the industry's evolution,</p> <p>22 economists debated whether or not there was,</p> <p>23 you know, the exercise of any type of market</p> <p>24 power at hubs. That's a debate that was</p> <p>25 occurring many decades ago. So it's possible</p> <p style="text-align: right;">Page 33</p>

<p>1 that in some of my testimony I've recounted 2 kind of the evolution of the industry, and 3 that's a part of the evolution of the 4 industry. 5 Q. Okay. Same question but as to 6 expert reports. Have you given any expert 7 reports on hub dominance or hub competitive 8 activities, other than the one that you're 9 testifying on here today? 10 A. Define what you mean by "hub 11 competitive activities." I'm not quite sure 12 what you mean by that. 13 Q. I thought that's what you were 14 describing in your testimony. Competitive 15 market forces at hubs in the airline 16 industry, is that a fair term? Do you 17 understand what I'm saying when I say that? 18 A. Why don't you describe what you 19 mean by that. 20 Q. Well you're the expert. I'm 21 trying to figure out what you believe are the 22 issues as it relates to competitive forces at 23 these hubs you've been talking about. You 24 tell me. 25 A. Well, as I've just told you, over</p> <p style="text-align: right;">Page 34</p>	<p>1 debate amongst scholars and amongst those 2 that were following the industry. 3 Q. Congress was interested in it as 4 well, right? 5 A. It was a vigorous debate. I'm not 6 sure if Congress per but certainly DOT 7 weighed in on it and others did as well. 8 Q. So getting back to A-10, if we 9 look at the last bullet point on A-10, that's 10 these above "Impact of COVID-19," where it 11 says, "Analysis of industry, regulatory and 12 economic issues for a major U.S. airline," 13 would that major U.S. airline have been 14 American Airlines or any of its affiliates? 15 A. Oh, gosh, let me think. 16 And this is stretching my memory 17 because this is now probably 27 years ago or 18 26 years. So I think American may have been 19 the carrier that was looking at some kind of 20 joint ownership agreement with a Canadian 21 holding company, but I think there could have 22 been; but, again, I don't want to say a 23 hundred percent was American, but I think it 24 could have been American. 25 Q. If we turn the page to A-11, the</p> <p style="text-align: right;">Page 36</p>
<p>1 the course of the industry's evolution, after 2 deregulation, when hub-and-spoke networks 3 became a more centralized part of a certain 4 carrier's airline networks -- 5 Q. What point in time are you 6 referring? 7 A. Well, deregulation occurred in 8 1978, and after 1978, there was a period of 9 time where the hub-and-spoke networks of 10 certain carriers, the trunk carriers, as they 11 were known at the time expanded -- 12 Q. To include American? 13 A. American was one of them, yes. 14 Q. Go ahead. 15 A. And over a period of years and 16 so -- I think kind of the hub -- kind of the 17 hub debate and, you know, when economists 18 were most focused on it was probably in the 19 late '80s, into the 1990s, into maybe the 20 early part of 2000s. 21 Again, so prior to essentially the 22 growth of an expansion of low-cost carriers, 23 there was a vigorous debate as to whether or 24 not hubs conferred certain types of pricing 25 advantages to hub carriers, but it was a</p> <p style="text-align: right;">Page 35</p>	<p>1 last bullet point in the first section on 2 that page says, "For a major U.S. carrier, 3 analysis of the impact of COVID-19." I 4 assume that that analysis was done somewhat 5 recently? 6 A. Yes, it was, yes. 7 Q. Okay. And when was that done? 8 A. Well, 2000, I think, generally, in 9 that time period, 2000, 2001. I mean, it was 10 kind of post-COVID period. 11 Q. You sure it was 2000 or 2001? 12 A. I'm sorry. 2020. 13 Q. 2020 or 2021? 14 A. 2020, 2021. Yeah. Sorry. 15 Q. And would that have been for 16 American Airlines? 17 A. We did work for American Airlines 18 as well as other airlines on COVID-related 19 issues, but we did certainly work with 20 American Airlines. 21 Q. If I'm looking at A-12, the second 22 bullet point under "Conferences and Other 23 Invited Presentations" it talks about 24 "Georgetown Center for Business and Public 25 Policy."</p> <p style="text-align: right;">Page 37</p>



<p>1 Do you see that one?</p> <p>2 A. I do, yes.</p> <p>3 Q. Airline Competition Conference,</p> <p>4 what did you speak about, if anything, at</p> <p>5 that conference?</p> <p>6 A. I believe I spoke -- let me think.</p> <p>7 So my recollection -- and I just</p> <p>8 need to -- my recollection is that I was --</p> <p>9 you know, I may be confusing it with what I</p> <p>10 spoke about at the -- I had a legal symposium</p> <p>11 just before that. It's one of two things or</p> <p>12 it may have been an amalgamation of a couple</p> <p>13 of things.</p> <p>14 But I recall having completed a</p> <p>15 whitepaper for Air New Zealand, where we were</p> <p>16 looking at -- we, when I say "we," my</p> <p>17 coauthors and I, at the joint venture that</p> <p>18 they had with a variety of carriers in Asia,</p> <p>19 and they had given us access to their</p> <p>20 ticketing data that allowed us to do things</p> <p>21 that -- and control for things that some of</p> <p>22 the economic literature that relies on public</p> <p>23 data wasn't able to control for, and I recall</p> <p>24 that we had some nice results or interesting</p> <p>25 results.</p> <p style="text-align: right;">Page 38</p>	<p>1 example, working on a matter for United in</p> <p>2 which United and American were competing for</p> <p>3 the same thing.</p> <p>4 The one that I can think of most</p> <p>5 recently would be in the most recent DOT</p> <p>6 allocation for slots at Haneda, and American</p> <p>7 and United were the two carriers that were</p> <p>8 competing for the initial daytime slot at</p> <p>9 Haneda, and I was working with United.</p> <p>10 Q. Was that a court case?</p> <p>11 A. It was -- no, it was DOT, with</p> <p>12 authority preceding.</p> <p>13 Q. Any other times you can -- it</p> <p>14 sounds like you're telling me that you've</p> <p>15 never testified adverse -- or given an expert</p> <p>16 report adverse to American Airlines in a</p> <p>17 court case; is that fair?</p> <p>18 A. I don't think I've been asked to,</p> <p>19 no.</p> <p>20 Q. Okay. Have you ever been --</p> <p>21 testified on behalf of a party that was an</p> <p>22 adverse party to a major U.S. airline carrier</p> <p>23 in any type of court case or tribunal?</p> <p>24 A. Not to the best of my recollection</p> <p>25 as I sit here right now.</p> <p style="text-align: right;">Page 40</p>
<p>1 I do recall speaking about that at</p> <p>2 the IATA Legal Symposium, and I suspect</p> <p>3 that -- because that talk was well received</p> <p>4 at the IATA conference, I may have also</p> <p>5 spoken about that and other issues at the</p> <p>6 Georgetown one as well.</p> <p>7 Q. You list quite a number of</p> <p>8 retentions dealing with the airline industry</p> <p>9 in Exhibit A, where you were retained as an</p> <p>10 expert -- excuse me -- Appendix A, where you</p> <p>11 were retained as a expert. I did not see any</p> <p>12 where you were adverse to American Airlines;</p> <p>13 is that correct?</p> <p>14 A. So I have been -- I mean, it</p> <p>15 depends on how you think of "adverse to." I</p> <p>16 have certainly worked on matters for other</p> <p>17 carriers, where the -- kind of the goals of</p> <p>18 that carrier were adverse to the interest of</p> <p>19 American Airlines, so.</p> <p>20 Q. Was that ever in a court case?</p> <p>21 A. I need to think about that.</p> <p>22 So American has never been the</p> <p>23 adverse party of a case where I've testified</p> <p>24 in. But, again, as I just said, there's been</p> <p>25 cases certainly where I may have been, for</p> <p style="text-align: right;">Page 39</p>	<p>1 Q. I notice in a number of places on</p> <p>2 a number of bullet points you say, "major</p> <p>3 U.S. airlines." You use that terminology.</p> <p>4 When you say "major U.S.</p> <p>5 airlines," which airlines are you referring</p> <p>6 to?</p> <p>7 A. Can you just point me to --</p> <p>8 Q. Sure. Like, for instance, on page</p> <p>9 A-9, and it's the third bullet point down,</p> <p>10 and it says -- this is one instance where you</p> <p>11 use the term "major U.S. airlines"?</p> <p>12 A. For several U.S. major airlines?</p> <p>13 Q. Yeah. And I'm trying to figure</p> <p>14 out, in your head, when you're saying "major</p> <p>15 carriers" or "major U.S. airlines," what is</p> <p>16 the universe you're talking about?</p> <p>17 A. Well, so the DOT has a</p> <p>18 classification system of airlines and majors</p> <p>19 are those that, I think over the trailing</p> <p>20 four quarters, have revenues over a billion</p> <p>21 dollars.</p> <p>22 Q. Okay. So this decade, in the</p> <p>23 United States, which carriers would fall</p> <p>24 under that category?</p> <p>25 A. This decade in the United States,</p> <p style="text-align: right;">Page 41</p>

<p>1 well it's grown obviously, but -- so  2 American, Delta, United, Southwest, Alaska,  3 JetBlue, Spirit would be a major airline by  4 this point. I think Frontier would be a  5 major airline by this point, and Hawaiian  6 would be a major airline at this point, and I  7 believe, I'd have to check to see whether or  8 not Allegiant is, for example. I don't  9 think, for example, Breeze or Avelo at this  10 juncture would be a major airline.  11 And, actually, I would add that  12 some of the regional carriers meet the  13 threshold -- the revenue threshold that DOT  14 would use to classify a major airline, so I  15 think SkyWest for sure.  16 Q. So in your Appendix A, when you  17 are referring to major U.S. airlines, you  18 would be referring to carriers at the time of  19 that specific retention that at least had  20 over -- what did you say, a billion  21 dollars of --  22 A. A billion dollars of revenue, yes.  23 Q. Annual. Trailing 12 months?  24 A. I think four quarters probably.  25 Q. Okay. What percentage of your</p> <p style="text-align: right;">Page 42</p>	<p>1 last five years where you've been retained,  2 actual court cases or arbitrations or  3 proceedings where there are adverse parties,  4 what percentage of your work has dealt with  5 the airline industry?  6 A. It's very high. It's north of 90  7 percent.  8 Q. How much money has American  9 Airlines paid for your services over the last  10 five years?  11 A. I couldn't tell you as I sit here  12 right now.  13 Q. Do you think it's hundreds of  14 thousands of dollars or millions of dollars?  15 A. You're saying for the billings to  16 me personally or of my billings or for all  17 the work of the entire team that's working on  18 a case?  19 Q. The entire team that you were  20 involved with.  21 A. Over the last five years, it's  22 probably been in millions.  23 Q. North of \$10 million?  24 A. No.  25 Q. North of \$5 million?</p> <p style="text-align: right;">Page 44</p>
<p>1 income is derived from -- or your billings, I  2 should say, is derived from either litigation  3 consulting or being retained as an expert as  4 it relates to the airline industry?  5 A. Over what period of time?  6 Q. Let's say the last five years.  7 A. So as being retained as an expert  8 or all the other --  9 Q. Or providing services for either  10 consulting or expert services for the airline  11 industry.  12 A. And would you be including in that  13 all types of carriers: passenger, cargo,  14 private?  15 Q. Sure.  16 A. It's fairly high. It's -- you  17 know, there's cases where I'm retained by --  18 for example, I'm working on a matter right  19 now where the client is a maintenance service  20 provider, so that's -- I'm not sure you would  21 put that in there, that's not an airline.  22 There the adverse party is actually an  23 airline. But I would say it's over 90  24 percent.  25 Q. Okay. And of the cases in the</p> <p style="text-align: right;">Page 43</p>	<p>1 A. I couldn't tell you as I sit here  2 right now.  3 Q. Somewhere between 1 and \$10  4 million is your estimate?  5 A. It is definitely above one. I  6 can't tell you whether or not it's -- it's  7 certainly not ten. I don't think. It's  8 somewhere between that, I would suspect.  9 Q. Exhibit 1, who drafted that?  10 A. I wrote every word of this report.  11 Q. Were there multiple drafts?  12 A. I'm not sure what you mean. I've  13 worked on this report. So at different  14 points in time it was at different states of  15 completion.  16 Q. Was there any point in time where  17 you passed a draft of the report that was not  18 final to somebody outside of your firm?  19 A. I think I sent one near-complete  20 version of the report to counsel for their  21 review.  22 Q. And did you retain that version of  23 your report?  24 A. Perhaps. I mean, it's -- it may  25 be sitting someplace.</p> <p style="text-align: right;">Page 45</p>

<p>1 Q. Have you produced your entire work 2 file or your team's entire work file on this 3 project to your counsel? 4 A. Yes, I have. 5 Q. Including any notes or work papers 6 you had? 7 A. I didn't have any notes or work 8 papers. 9 Q. Okay. Did your team have any 10 notes or work papers on this project? 11 A. Not that I know of. 12 Q. I know, obviously, you've had 13 discussions with your counsel, which, again, 14 I don't want to know about, but have you had 15 discussions with American personnel directly 16 about this particular project that you've 17 undertaken in this case? 18 A. On the first kickoff call, just to 19 discuss the issues that were involved in this 20 case and whether or not I could participate, 21 there was an attorney from American on the 22 call. 23 Q. Okay. Other than that call, have 24 you had any discussions with American 25 Airlines' personnel as it relates to this</p> <p style="text-align: right;">Page 46</p>	<p>1 BY MR. TOBIN: 2 Q. It's probably a reflection on me 3 somehow? 4 So in your report you identified 5 the materials you reviewed to help you with 6 the project in this case. 7 Are there any materials you 8 reviewed for this project in this lawsuit 9 other than what's identified in your report, 10 Exhibit 1? 11 A. I mean, not specifically. What I 12 would tell you is that every project I work 13 on, every report that I write, you know, I 14 also rely upon my knowledge of the industry, 15 my 25-plus years of doing both academic 16 research and other consulting work of the 17 airline industry, and so that kind of 18 accumulated knowledge of the industry and how 19 it works and -- all filters down into all of 20 my thinking, but what's listed in Appendix -- 21 is it A? 22 Q. I think it's B. 23 A. B, are all of the documents and 24 data that I specifically relied upon in this 25 report.</p> <p style="text-align: right;">Page 48</p>
<p>1 case? 2 A. I have not. 3 Q. Other than those calls, have you 4 had any written communications with American 5 Airlines' personnel regarding this case? 6 A. I have not. 7 Q. Are you aware of your team having 8 any communications, written or oral, with 9 American Airlines related to this case, other 10 than what you've already told me about? 11 A. Not that I'm aware of. 12 Q. Did you help American Airlines 13 personnel prepare for any other depositions? 14 A. I had just one call prior to 15 Dr. Vasigh's deposition. I wouldn't 16 necessarily characterize it as helping him 17 prepare, but they more or less wanted to 18 understand what was in my report, you know, 19 walk through my report with me. 20 Q. And was that call with the lawyers 21 or was it with American Airlines personnel? 22 A. It was with attorneys. 23 (Beeping noise.) 24 A. It was telling me to be more 25 active. Sorry.</p> <p style="text-align: right;">Page 47</p>	<p>1 Q. Okay. Other than your general 2 accumulation of information from being in the 3 industry for many years, are there any 4 reports, data or documents that you reviewed 5 or relied on to prepare your report that are 6 not listed in Appendix B? 7 A. Not that I know of. If there 8 were, it would an omission by -- an 9 oversight. 10 Q. What about specifically any types 11 of authoritative text, treatises, industry 12 papers, any type of written authority that 13 you reviewed or relied on specifically to do 14 your work in this case? 15 A. Are they -- I mean, I think the 16 data on the documents, maybe the documents I 17 cite, but particularly the data, I'm a very 18 data-driven person, the data speaks for 19 itself, and I've cited and documented the 20 data that I used in this report. 21 Q. Anything else? 22 A. As I said, Appendix B contains a 23 list of all of the data and documents that I 24 specifically relied upon in forming my 25 opinions in this report, obviously</p> <p style="text-align: right;">Page 49</p>

<p>1 supplemented my 25 years of experience.  2 Q. And all those data and documents  3 you did turn over to your lawyers in this  4 case?  5 A. Yes, we did.  6 Q. Have you ever been retained by  7 Kelly Hart -- or a case where Kelly Hart were  8 the lawyers for the party that you were  9 working for, other than this case?  10 A. Kelly Hart was cocounsel, I  11 believe, in a matter that I testified to --  12 testified in in 2019, I believe.  13 Q. And who did you offer opinions on  14 behalf of in that case?  15 A. That would have been American  16 Airlines.  17 Q. And which case was that?  18 A. That would have been -- pardon  19 me -- in the TWU/IAM Association slowdown  20 matter in Fort Worth.  21 Q. Is that matter reflected in your  22 report in the appendix?  23 A. It is. I gave testimony before a  24 Judge McBride, the late Judge McBride.  25 Q. Same question for Greenberg</p> <p style="text-align: right;">Page 50</p>	<p>1 Q. And what jurisdiction was that in?  2 A. That was across the street.  3 MR. MUYSKENS: Right over there.  4 A. That was the Justice Department,  5 U.S. -- United States of America versus  6 JetBlue and American.  7 BY MR. TOBIN:  8 Q. Who were you representing in this  9 case?  10 A. JetBlue and American. I wasn't  11 representing. I'll just take that back. I  12 wasn't representing anyone. I was offering  13 testimony on behalf of.  14 Q. Who were you retained by?  15 A. American and JetBlue.  16 Q. And was that a published opinion?  17 A. Was it a published opinion?  18 Q. Yes.  19 A. I believe it was a published  20 opinion, yes.  21 Q. And I'm sorry, when again was  22 that?  23 A. The decision came down, what, a  24 year ago maybe. It's under appeal currently.  25 Q. And that case is listed in your</p> <p style="text-align: right;">Page 52</p>
<p>1 Traurig, have you ever been retained by them  2 in an airlines case before?  3 A. Not to the best of my  4 recollection.  5 Q. Have you ever been retained by  6 Greenberg Traurig before for any  7 representation?  8 A. Not to the best of my  9 recollection.  10 Q. Have any of your opinions ever  11 been criticized, disregarded or excluded by a  12 court or any type of tribunal or authority?  13 A. Could you repeat the question?  14 Q. Sure. Have any of your opinions  15 ever been criticized, disregarded or excluded  16 by a court, tribunal or any type of  17 authority?  18 A. Sure. Yes.  19 Q. Okay. How many times has that  20 happened?  21 A. So the ones that I'm thinking of,  22 Judge Sorokin, whose opinion, actually to  23 this day, I very much disagree with,  24 criticized my opinions in the  25 JetBlue/American NEA trial.</p> <p style="text-align: right;">Page 51</p>	<p>1 Appendix in the report?  2 A. It is, yes.  3 Q. Any other times this has happened,  4 where you've been criticized, disregarded --  5 your opinions have been criticized,  6 disregarded or excluded by a court, tribunal  7 or authority?  8 A. So there's one case back in, I  9 think it's like 2008, where the judge  10 excluded multiple experts' opinions with  11 regards to one aspect of the report, and it  12 wasn't due to methodical or any liability  13 issues. He had just decided, as a matter of  14 law, that one of the things I was asked to  15 study and opine on wasn't relevant as a  16 matter of law.  17 Q. And which case was that?  18 A. That was the Delta, AirTran bag  19 fee litigation.  20 Q. And what court was that in?  21 A. It was in Georgia, I believe.  22 Q. Federal or state court?  23 A. Federal court, I believe. But,  24 again, it was not -- he excluded testimony  25 from multiple experts just as a matter of</p> <p style="text-align: right;">Page 53</p>

<p>1 law. 2 Q. Do you recall who the judge was? 3 A. I don't recall. 4 Q. Do you remember who retained you? 5 A. Boies Schiller. 6 Q. What was the party you were 7 working for? 8 A. Delta Airlines. 9 Q. Okay. Any other instances where 10 your opinions have been criticized, 11 disregarded or excluded by a court, tribunal 12 or authority. 13 A. So, I mean, are you asking if I've 14 offered testimony in a matter and the judge 15 or finder of fact decided, you know, ruled -- 16 ruled against the party that I was retained 17 by? Is that what you are asking? 18 Q. No, that's not my question. 19 My question is whether your 20 opinions have either been criticized, 21 disregarded or excluded or struck from a 22 court proceeding by a judge? 23 A. No. Other than to -- and they 24 weren't struck in the NEA trial. They were 25 just -- he didn't find it compelling, for</p> <p style="text-align: right;">Page 54</p>	<p>1 A. Yeah, I think -- was it -- and 2 JetBlue, I just want to make sure you're 3 looking at the right one. I think it would 4 have been both -- against United 5 States versus JetBlue -- American and 6 JetBlue, right? 7 Q. If you just want to identify which 8 bullet point it is on your Appendix A. 9 A. Yeah. It's on A-4, the third 10 bullet. 11 Q. Thanks. 12 So in reading all these reports, 13 I've seen some acronyms and what appear to be 14 industry terms of art that I wasn't 15 necessarily familiar with until I got into 16 this case. So I want to go over a few of 17 them just to make sure you and I are on the 18 same page while we're talking about things. 19 Have you seen the acronym GNC 20 before? 21 A. Yes, I have. 22 Q. What does that mean to you? 23 A. Global network carrier. 24 Q. And what is a global network 25 carrier?</p> <p style="text-align: right;">Page 56</p>
<p>1 reasons I don't quite understand, but no. 2 I can -- there's many opinions 3 that spoke quite favorably of my opinions, 4 including Judge McBride, if you wanted to 5 read that one. 6 Q. All right. It sounds like 7 decades, but how long have you been 8 consulting in the airline industry? 9 A. Since 1998. 10 Q. At a transition point, do you need 11 a break or do you want to keep going? 12 A. I mean, I'm fine. If you want 13 to -- stretch my legs. 14 Q. Let's take a five-minute break? 15 THE VIDEOGRAPHER: The time is 16 10:09. We're going off the record. 17 (Recess taken at 10:09 a.m. to 10:18 a.m.) 18 THE VIDEOGRAPHER: We are back on 19 the record. The time is 10:18. 20 BY MR. TOBIN: 21 Q. So, Dr. Lee, I think I may have 22 found the case you were talking about. Was 23 it United States versus American Airlines 24 Group here in the District of Massachusetts 25 last year?</p> <p style="text-align: right;">Page 55</p>	<p>1 A. Well, a global network carrier is 2 a carrier that kind of has the name -- tries 3 to explain -- has a global reach in nature 4 and operates a set of hub-and-spoke -- 5 hub-and-spoke network usually with multiple 6 hubs, you know, with a global reach. 7 Q. Is American a global network 8 carrier? 9 A. Yes, American, Delta and United 10 are the three U.S. global network carriers. 11 Q. And what is the acronym or term 12 O&amp;D to you? 13 A. It means origin and destination. 14 Q. And if you'd explain what you 15 believe that means or what you understand it 16 to mean. 17 A. So the term O&amp;D -- so because of 18 passengers who travel by air often make 19 connections, not always but often make 20 connections, the term O&amp;D refers to the 21 origin and the destination of that city 22 pairs, often looked at as a city pair with a 23 metropolitan area on both ends, kind of 24 irrespective of whether there's a connection 25 in between.</p> <p style="text-align: right;">Page 57</p>



<p>1 So as I describe in my report, a 2 passenger that's traveling between Boston and 3 San Antonio is a -- and suppose I make that 4 connection via DFW, an O&amp;D passenger between 5 Boston and San Antonio, and I'm not an O&amp;D 6 passenger between Boston and Dallas, nor 7 between Dallas and San Antonio. 8 Q. Okay. So in the example you just 9 gave, is city pair synonymous with O&amp;D? 10 A. It's not synonymous because 11 sometimes -- and I generally don't think it's 12 the best practice, but sometimes people think 13 of O&amp;D as airport pairs, and in the case of 14 Boston to San Antonio, because there's only 15 one airport in both the Boston and San 16 Antonio, those two would be the same. But if 17 you were looking at, for example, Washington 18 DC to Miami, Fort Lauderdale, there are, you 19 know, airport pairs within that city pair, 20 and so they wouldn't -- I mean, I would treat 21 the two as synonymous, but some people might, 22 for certain reasons, look at the various O&amp;D 23 airport pairs within that city pair. 24 Q. Now, you mentioned earlier in your 25 testimony the term "hub and spoke." Hub and</p> <p style="text-align: right;">Page 58</p>	<p>1 refer to it. 2 Q. What do you believe it means? 3 When it's been referred to in this case. 4 A. Dynamic pricing, I think is 5 referring to essentially the temporal element 6 of prices or airfares and how they're kind of 7 constantly evolving over time. 8 Q. Okay. So -- and we talked a 9 little bit about this earlier, that, for 10 instance, your example, Boston to San Antonio 11 through DFW, you may have looked for that 12 flight on American Airlines today and that 13 price, based on American's dynamic pricing, 14 could be different tomorrow or even three 15 days from now or a week from now. Is that 16 fair to say? 17 A. . As inventory is sold, pricing 18 can change. 19 Q. And quite often it does, right? 20 A. It can, yes. 21 Q. Are you familiar with the term 22 "revenue management" as it relates to the 23 airline industry? 24 A. I am, yes. 25 Q. What does that term mean to you?</p> <p style="text-align: right;">Page 60</p>
<p>1 spoke still exists as we sit here today, 2 right? 3 A. Absolutely. 4 Q. Okay. So when you use the term 5 "hub and spoke," what do you mean? 6 A. As I described earlier, it's a 7 network architecture that focuses around a 8 number of hub airports, for example, American 9 has hubs in Dallas Fort Worth and Charlotte, 10 Philadelphia, JFK, others as well, Chicago 11 O'Hare. And the network is designed to bring 12 travelers from multiple spokes into the hub 13 airport and to facilitate convenient 14 connections to multiple destinations, and 15 it's just -- it's one type of network 16 structure, and the other one is known as 17 point to point. 18 Q. Are you familiar with the term 19 "dynamic pricing" as it relates to the 20 airline industry? 21 A. I've heard the term used. I 22 believe it's a term that either Dr. Vasigh or 23 Mr. Phiroz uses. I don't know if it's 24 necessarily a term of art, but I certainly -- 25 I think I understand what they mean when they</p> <p style="text-align: right;">Page 59</p>	<p>1 A. Well, it's a pretty broad term; 2 but, essentially it means, in one of the 3 goals of all airlines, is to kind of manage 4 their inventory of seats. They're perishable 5 products, and one of the goals of airlines is 6 to try to maximize the revenue from those 7 available seats, and they have to do it 8 taking into account a lot of different 9 things. 10 The evolution of demand, 11 competitive activities on markets and so 12 revenue management is kind of like a broad 13 part of airline pricing that is -- kind of 14 captures the entire way that airlines are 15 trying to, you know, price all of the 16 different O&amp;Ds within their network. 17 Q. And it's your understanding, based 18 on your experience in the industry, that the 19 United States GNCs, the three major carriers 20 you're talking about, devote a lot of time 21 and resources to management; is that fair? 22 A. Well, I don't think that there's 23 an airline out there that doesn't devote a 24 lot of time to revenue management. I mean, 25 that's half of the equation of whether or not</p> <p style="text-align: right;">Page 61</p>

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<p>1 you're hoping to generate a profit from 2 operating flights. 3 So revenue management is not 4 something that is limited to GNCs. Every 5 carrier, as I describe in my report, uses 6 revenue management. 7 Q. But this is, as far as this, you 8 know, emphasis on revenue management, if I 9 understand what I've been reading in this 10 case, this emphasis on revenue management has 11 really revved up in, say, the last 20 years; 12 is that fair? 13 A. I'm not sure I would -- I mean, I 14 think revenue management has always been -- 15 well, particularly in the post-deregulation 16 era, so it's different if we were talking 17 about the pre-deregulation era, where fares 18 and routes and entry were really dictated by 19 the Civil Aeronautics Board. It was a 20 regulated structure. Then revenue management 21 wasn't really as much of an issue. 22 But at least since 1979, when airlines 23 were given the freedom to price as they saw 24 fit and based off of market forces as opposed 25 to government, essentially cost-based</p> <p style="text-align: right;">Page 62</p>	<p>1 being a particular city? 2 A. Well, it depends on the context of 3 the -- what you're looking at. 4 Q. Let's talk about American Airlines 5 in Dallas Fort Worth. You understand 6 there're multiple commercial airports in 7 Dallas Fort Worth, right? 8 A. I do. 9 Q. When you're referring to the 10 hub-and-spoke system as it relates to the 11 American Airlines, are you referring to all 12 the commercial airports in Dallas or are you 13 just referring to DFW? 14 A. So when one is looking at 15 American's hub and spoke at Dallas, okay, 16 let's focus in Dallas, American's hub is 17 based at Dallas Fort Worth. However, that 18 hub at DFW competes with primarily Southwest, 19 as well as a few other carriers' flights in 20 and out of Dallas Love Field. 21 Q. Well, let me stop you there for a 22 second. 23 In that example, Southwest would 24 have a hub out of Dallas Love Field, just the 25 way we're talking about American having a hub</p> <p style="text-align: right;">Page 64</p>
<p>1 formulas, a revenue management has been a big 2 part of airlines; and, you know, as computer 3 technology has improved across all 4 industries, revenue management perhaps has 5 gotten more sophisticated, but it's always 6 been something that has been out there. 7 Q. And your understanding is the 8 revenue management teams for a particular 9 airline, one of their main goals is to 10 maximize profitability, correct? 11 A. I think all airlines have the goal 12 of maximizing profitability. 13 Q. And revenue management plays a big 14 part of that, right? 15 A. Sure. It does absolutely, for 16 every airline. 17 Q. And most airlines, to include the 18 American Airlines of the world, have large 19 teams devoted to revenue management, right? 20 A. I think any airline out there 21 devotes substantial resources to revenue 22 management, including American. 23 Q. And when you're talking about hub 24 and spoke, are you talking about hub and 25 spoke, the hub being a particular airport or</p> <p style="text-align: right;">Page 63</p>	<p>1 out of Dallas Fort Worth, correct? 2 A. Southwest doesn't refer to 3 Southwest as a hub-and-spoke carrier. 4 There're a point-to-point carrier. But I 5 will tell you that, all right, as I also 6 mention in my report, that even if you have a 7 point-to-point network, when your operations 8 at an airport like Southwest at Love Field or 9 like Southwest at Houston Hobby, reach a 10 certain size, where you're serving multiple 11 destinations with multiple flights per day, 12 they will flow passengers over Love Field. I 13 don't think Southwest would ever characterize 14 itself as a hub-and-spoke carrier. But there 15 are people -- there are numerous passengers, 16 particularly at places like Love Field or at 17 Hobby, that do make connections. 18 Q. But Southwest does dominate the 19 market at Dallas Love Field, right? I mean, 20 they have over 80 percent of the gates there, 21 correct? 22 A. I'm not sure I would use the term 23 "dominate" the same way you do. But they do 24 have the majority of flights out of there 25 because of kind of the multiparty agreement</p> <p style="text-align: right;">Page 65</p>

<p>1 that was between the City of Dallas and 2 various folks. It's a very unique airport in 3 that there's a very finite number of gates, 4 and because of that, Southwest operates the 5 most flights out of Dallas Love Field. 6 Q. Just the way American operates 7 most of the flights out of Dallas Fort Worth, 8 right? 9 A. American has a hub at Dallas Fort 10 Worth, and they are the largest carrier, 11 Dallas Fort Worth. Dallas is a hugely 12 competitive market. 13 Q. Do you -- so who is highly 14 competitive in the Dallas market other than 15 Southwest Airlines and Dallas Fort -- and 16 American Airlines? 17 A. It depends on where you're 18 traveling. 19 Q. Let's say domestically. 20 A. Yeah, yeah. I mean, again, 21 depends on the city you're referring to. But 22 just, for example, in my report, I think 23 it's -- I can't remember if it's Exhibit 7 or 24 something like that -- I was looking at the 25 same city pairs that Dr. Vasigh was looking</p> <p style="text-align: right;">Page 66</p>	<p>1 domestically, going in and out of the Dallas 2 Fort Worth International Airport are American 3 Airlines? 4 A. Again, they have a hub at -- 5 American Airlines operates a hub at Dallas, 6 so they operate a large number of flights to 7 serve a large number of both domestic and 8 international destinations, but I think you 9 might be confusing operating a hub with 10 somehow -- or maybe you're not but certainly 11 Dr. Vasigh is -- confusing operating a hub 12 with somehow that hub conferring some type of 13 market power, which I absolutely don't agree 14 with. 15 MR. TOBIN: Objection, 16 nonresponsive. 17 BY MR. TOBIN: 18 Q. Do you know the percentage of 19 flights coming out of Dallas Fort Worth 20 International Airport that are operated by 21 American or its affiliates? 22 A. I don't know the precise number 23 offhand, but it is -- they operate it as a 24 substantial number. They're the hub carrier 25 there.</p> <p style="text-align: right;">Page 68</p>
<p>1 at, and I describe all of the competition on 2 all of the different city pairs that he was 3 looking at, and Spirit is on a large number 4 of the popular routes out of Dallas. United 5 flies to multiple places out of Dallas. 6 Frontier does. Delta does. So there's a lot 7 of competition in Dallas. It's highly 8 competitive. 9 Q. How many gates are there at Dallas 10 Fort Worth International Airport? 11 A. I don't know offhand, but it's 12 well over a hundred. 13 Q. And what percentage of the gates 14 does American have at Dallas Fort Worth 15 International Airport? 16 A. I don't know offhand, but it's as 17 a hub-and-spoke carrier, it operates out of 18 numerous gates, but that doesn't prevent, in 19 any way, shape or form, other carriers from 20 entering or expanding at Dallas Fort Worth, 21 as Spirit has. I mean, you can just look at 22 what Spirit has done in Dallas over the last 23 five to ten years. It's grown enormously at 24 Dallas. 25 Q. What percentage of flights,</p> <p style="text-align: right;">Page 67</p>	<p>1 Q. Do you believe it's over 50 2 percent of the flights? 3 A. Yes, it's probably -- and that's 4 not uncommon at all, at a hub airport for the 5 hub carrier to offer over 50 percent, that's 6 not uncommon. 7 Q. And you believe it's over 70 8 percent of the flights? 9 A. It could be. But, again, that's 10 not uncommon. 11 Q. So it's not uncommon, for 12 instance, Delta to operate over 70 percent of 13 the flights going out of Atlanta Hartsfield 14 International Airport? 15 A. That is not uncommon that a hub 16 carrier operates in that range, I don't know 17 if it's 70 percent, of that -- of flights out 18 of one airport, yeah. 19 Q. When you say a hub carrier to 20 operate out of a -- out of one airport, I 21 mean we are talking about at least a large 22 percentage of the flights that that hub 23 carrier typically operates out of that hub 24 airport, correct? 25 A. Yeah, it depends. I mean,</p> <p style="text-align: right;">Page 69</p>



<p>1 airports like Chicago O'Hare, which has two  2 hub carriers, both American and United, or  3 there's airports like LAX, which has, like, I  4 guess three hub carriers plus service from  5 other carriers as well. So it varies.  6 Q. So what would the three hub  7 carriers be at LAX?  8 A. Delta, American and United.  9 Q. But combined, those three hub  10 carriers at LAX or the two hub carriers being  11 American and United at Chicago O'Hare, by far  12 operate a large percentage of the flights  13 going out of -- in and out of those airports,  14 correct?  15 A. I would agree that combined they  16 do. I would also -- you know, if you're  17 looking at competition out of Chicago, of  18 course you have to consider the service out  19 of Midway. If you're looking at competition  20 out of the LAX, you also have to consider  21 other airports in the LA-based area that all  22 kind of compete for the LA traffic market.  23 But yeah, I don't disagree with the notion  24 that at many airports the hub carriers  25 collectively offer the most number of</p> <p style="text-align: right;">Page 70</p>	<p>1 airport -- on airline operations at airports.  2 Q. I'm sorry. Did you say OIG or  3 OAG?  4 A. OAG.  5 Q. Which stands for?  6 A. The Official Airline Guide.  7 Q. But whether it's DOT or OAG, you  8 obviously would agree those are credible  9 sources for statistics on, you know, consumer  10 air traffic carrier?  11 A. They are statistics -- well, when  12 you say "statistics," I don't know if you're  13 referring to statistics or data but --  14 Q. Better word is "data." You're  15 right.  16 A. -- they have data.  17 Q. Let me -- sorry. Let me rephrase  18 my question.  19 Whether it's OAG or DOT, you would  20 agree with me that the data they keep is  21 reliable data for experts like yourself to  22 review and rely on in the airline industry?  23 A. I rely on DOT data in much of what  24 I do, as well as other sources.  25 Q. Including O- --</p> <p style="text-align: right;">Page 72</p>
<p>1 flights, just in the same way that at other  2 airports where Southwest is the largest  3 carrier might operate the largest number of  4 flights.  5 Q. And when you said -- earlier you  6 referred to, I believe, DOT. You're  7 referring to the U.S. Department of  8 Transportation? Just so the record is clear.  9 A. Yes.  10 Q. And DOT keeps stats on all of  11 this, right? In fact, you cited a number of  12 DOT stats in your report, right?  13 A. DOT keep stats on what,  14 specifically?  15 Q. The amount of flights going in and  16 out of airports where a hub carrier is  17 present?  18 A. Yeah, I mean, the DOT has access  19 to a lot of data, and so I suppose -- I mean  20 some of the stats that DOT looks at, which  21 would have that type of -- they would have  22 access to that information through the DOT  23 100 database, through the ops database. I  24 often look at OAG, which is not a DOT  25 database, but certainly DOT has data on</p> <p style="text-align: right;">Page 71</p>	<p>1 A. OAG.  2 Q. -- data from --  3 A. OAG, that's correct.  4 Q. And just let's make sure -- look,  5 I know exactly what you're saying, and you  6 where I'm going and I'm from Texas and a very  7 deliberate slow speaker, but because we got a  8 court reporter it's really hard for her to  9 take things down if we talk over each other,  10 and I'm just as guilty of that today, but  11 let's try to be conscious of it.  12 A. Understood.  13 Q. I think you would at least agree  14 with me that gate and landing slot  15 opportunities are difficult to obtain at  16 Atlanta Hartsfield Airport unless you're  17 Delta Airlines, right?  18 A. I would disagree with that.  19 Q. Well, I mean, don't they have a  20 contract that allows them to control a  21 certain -- doesn't Delta have a contract with  22 Atlanta Hartsfield that allows them to  23 operate and control a certain number of gates  24 at Atlanta Hartsfield?  25 A. Well, I just want to break down</p> <p style="text-align: right;">Page 73</p>

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<p>1 your question. So you mentioned two things.  2 You mentioned gates and slots.  3 Q. Okay. Let's take them separately.  4 Let's start with gates first.  5 A. So repeat your question.  6 Q. Sure. You understand -- it's at  7 least your understanding that Delta has an  8 agreement with Atlanta Hartsfield to operate  9 a certain number of gates at Atlanta  10 Hartsfield Airport?  11 A. Yeah, and, again, that's not  12 uncommon for hub carriers that make large  13 investments at hub airports to have preferred  14 access to a certain number of gates, that's  15 correct.  16 Q. And just like American Airlines  17 has similar preferred air access at Dallas  18 Fort Worth International Airport, correct?  19 A. They do. But just, you know,  20 importantly that does not imply that there  21 are not other gates available to carriers  22 that want access to the airport.  23 Q. Who at Dallas Fort Worth  24 International Airport had, to your  25 understanding, has preferred access to gates</p> <p style="text-align: right;">Page 74</p>	<p>1 agreement with DFW International for a  2 carrier other than American Airlines for  3 multiple gates?  4 A. Again, I'd have to -- I'd have to  5 go and look to see exactly what they do. But  6 I'm certain that other airlines that operate  7 at DFW have gates that they've been using for  8 many years and plan to use for many years in  9 the future, and if they wanted to expand  10 their operations, they could find additional  11 gates.  12 MR. TOBIN: Objection,  13 nonresponsive.  14 BY MR. TOBIN:  15 Q. Are you aware of anybody that has  16 preferred access at Dallas Fort Worth  17 International Airport, as you used the term  18 earlier, other than American Airlines?  19 A. I would just have to look to see  20 which other carriers have those types of  21 agreements --  22 THE STENOGRAPHER: I'm sorry.  23 What was the end of that?  24 THE WITNESS: I said I would need  25 to investigate which airlines have</p> <p style="text-align: right;">Page 76</p>
<p>1 other than American Airlines?  2 A. I would need to look at the  3 different agreements, but I'm not aware of  4 any carrier that has -- wants to fly out of  5 DFW and that there isn't sufficient gate  6 availability for them to do that.  7 Q. Well, you just used the term  8 "preferred access" as it related to Delta and  9 Atlanta, and you agreed with me that American  10 Airlines has that same arrangement at Dallas  11 Fort Worth International Airport, right?  12 A. Yeah, there's multiple concourses  13 at large hub airports where the hub  14 carriers -- what may be referred to as, like,  15 a signatory tenant or whatever of that  16 concourse, but there's other concourses that  17 are common use -- you know, have common use  18 gates and that are not -- where there's not a  19 long-term lease agreement between the airport  20 and that airline for access to those gates.  21 I mean, that's, again, not uncommon in the  22 industry at all.  23 Q. Who do you understand at Dallas  24 Fort Worth International Airport has  25 preferred access or a long-term lease</p> <p style="text-align: right;">Page 75</p>	<p>1 agreements for kind of long-term gate  2 leases.  3 BY MR. TOBIN:  4 Q. So as we sit here today, without  5 consulting those materials, you're not aware  6 of any other carrier -- U.S. carrier that has  7 preferred access at Dallas Fort Worth  8 International Airport other than American  9 Airlines?  10 A. I think that numerous airlines are  11 almost certainly to have long-term gate  12 agreements with DFW, for obviously a smaller  13 number of gates because they don't operate  14 hubs, they don't operate a hub at that  15 airport. But, again, I mean, ultimately,  16 really the key question is, could airlines,  17 to the extent they wanted to expand their  18 operations at DFW, have access to gates in --  19 a hundred percent I believe they could, as  20 we've seen with, for example, Spirit.  21 MR. TOBIN: Objection,  22 nonresponsive.  23 BY MR. TOBIN:  24 Q. Do you believe that American  25 Airlines has an arrangement with Dallas Fort</p> <p style="text-align: right;">Page 77</p>

<p>1 Worth International Airport that other 2 carriers could not get?</p> <p>3 A. I don't think so. I mean, if, for 4 example, hypothetically, another carrier made 5 a decision to open a hub at DFW, I am sure 6 that DFW would welcome those discussions.</p> <p>7 Q. That would -- as you understand 8 DFW to be constructed right now, I mean, if 9 another carrier wanted to control 30 or more 10 gates at Dallas Fort Worth International 11 Airport, that would probably require 12 significant construction at the airport. 13 Wouldn't you agree?</p> <p>14 A. I would need to look at the 15 current level of gate utilization. It's a 16 very large airport, and there's a lot of 17 gates there, and, you know, it's possible 18 that things could be shuffled around; but, 19 again, I would say that if an airline were 20 interested in opening a hub at DFW, that DFW 21 Airport would welcome those discussions. 22 Just in the same way, for example, that, you 23 know, that Delta decided to open a hub in 24 Seattle. Like -- you know, that was an 25 Alaska Airlines hub. Delta decided to make</p> <p style="text-align: right;">Page 78</p>	<p>1 is slot controlled. And then there's -- 2 there's another airport with, you know, 3 Liberty in Newark, which is not formally slot 4 controlled, but that the FAA put certain 5 operational limits on it.</p> <p>6 Q. And do the major airline carriers 7 in the U.S. bargain with somebody to get a 8 certain number of slots that they're entitled 9 to at these airports that are slot 10 controlled?</p> <p>11 In other words, do they have, as 12 part of their agreement, where they get to 13 have a certain number of slots in the 14 day-to-day running of that airport?</p> <p>15 A. Slots are allocated at those 16 airports.</p> <p>17 Q. How are they allocated?</p> <p>18 A. I mean that's a long --</p> <p>19 Q. Are they allocated by contractual 20 agreement?</p> <p>21 A. They are allocated kind of by -- I 22 mean, some of them have been acquired over 23 time, right? So, you know, if one were to 24 kind of go back in time, you know, why does 25 American have proportionally more slots at</p> <p style="text-align: right;">Page 80</p>
<p>1 it a hub. They've grown their operations 2 there substantially.</p> <p>3 Q. We've used the term "landing slot" 4 during this deposition. What do you 5 understand that term to mean?</p> <p>6 A. Well, a slot is a specified period 7 of time where an airline can perform an 8 operation. An operation being either a 9 departure or a takeoff, and there's only a 10 very small number of airports in the United 11 States that are slot controlled.</p> <p>12 Q. And are the airports in the United 13 States that are slot controlled hub airports?</p> <p>14 A. So JFK is slot controlled, and so 15 that's a hub for -- primarily Delta. 16 American has a much smaller presence, 17 although they do operate kind of an 18 international hub out of JFK, but Delta is a 19 much, much larger carrier. So JFK is slot 20 controlled. LaGuardia is slot controlled. 21 And, again, that's really a Delta hub.</p> <p>22 American has a smaller presence 23 again at LGA. I should have mentioned 24 JetBlue being a hub carrier at JFK, and then 25 DC airport, where American does have a hub,</p> <p style="text-align: right;">Page 79</p>	<p>1 DCA right now is because they had exchanged 2 slots -- actually, it was US Air that 3 exchanged slots with Delta. You know, they 4 did what was known as the slot swap back in 5 2011. And so over time they have acquired 6 them through commercial transactions and the 7 such.</p> <p>8 Q. So that example you just listed 9 where American did a slot swap with Delta, 10 American got additional slots at DC airport, 11 correct?</p> <p>12 A. It was actually US Airways.</p> <p>13 Q. But US Airways has now merged with 14 American, right?</p> <p>15 A. That is correct.</p> <p>16 Q. So American is the beneficiary of 17 those slots, right?</p> <p>18 A. They now are in possession of 19 those slots.</p> <p>20 Q. So that slot swap that you were 21 talking about in 2011 with US Air and Delta, 22 what did Delta get in exchange for those 23 slots?</p> <p>24 A. They got slots at LaGuardia.</p> <p>25 Q. So they divvied up different slots</p> <p style="text-align: right;">Page 81</p>

<p>1 at different major U.S. hubs?</p> <p>2 A. I'm not sure they divvied up.</p> <p>3 They entered into a trade for some slots.</p> <p>4 Q. And Delta is a major carrier at</p> <p>5 LaGuardia as we sit here today, right?</p> <p>6 A. It is, I think, the largest</p> <p>7 carrier at LaGuardia, although many airlines</p> <p>8 also serve LaGuardia.</p> <p>9 Q. And American is the largest</p> <p>10 carrier at DC -- Washington DC Airport,</p> <p>11 correct?</p> <p>12 A. They're the largest carrier at</p> <p>13 Reagan National Airport. Obviously DC is</p> <p>14 served by both DCA, as well as IAD and BWI</p> <p>15 airports, but at DCA American is the largest</p> <p>16 carrier. At IAD United is the largest</p> <p>17 carrier, and at BWI Southwest is the largest</p> <p>18 carrier.</p> <p>19 Q. Of all the Washington airports, if</p> <p>20 you combine them together, does American have</p> <p>21 the most landing slots?</p> <p>22 A. Well, that's kind of -- as I</p> <p>23 mentioned the other airports are not slot --</p> <p>24 there are no slots at IAD and BWI. So kind</p> <p>25 of definitionally, because DCA is the only</p> <p style="text-align: right;">Page 82</p>	<p>1 individual consumer?</p> <p>2 A. Yes. Yes.</p> <p>3 Q. Okay.</p> <p>4 A. And -- but when one looks at the</p> <p>5 data kind of in the aggregate, what one sees</p> <p>6 that if you go back to -- point to Exhibit 1</p> <p>7 in my report, so we can talk about it in the</p> <p>8 nonabstract. If you're to look at this long</p> <p>9 period of time since deregulation, when</p> <p>10 lower-cost carriers had expanded, you can see</p> <p>11 that the large network carrier share has gone</p> <p>12 from 89 percent down to 52 percent. So that</p> <p>13 would suggest that many passengers have</p> <p>14 developed brand loyalty to some of the</p> <p>15 lower-cost carriers as well.</p> <p>16 Q. Or it could suggest that people</p> <p>17 are just trying to find the lowest price</p> <p>18 flight as well, right?</p> <p>19 A. Absolutely. People often -- price</p> <p>20 is an important factor in the decision of</p> <p>21 many consumers.</p> <p>22 Q. And so do you believe that, as we</p> <p>23 sit here today in 2024 compared to 1994, when</p> <p>24 your percentages look like in Exhibit 1 start</p> <p>25 escalating, that people are more likely today</p> <p style="text-align: right;">Page 84</p>
<p>1 slot-controlled airport of those three and</p> <p>2 because American happens to be the largest</p> <p>3 carrier at DCA, they have the largest number</p> <p>4 of slots.</p> <p>5 I can't tell you at this moment</p> <p>6 sitting here right now if they actually</p> <p>7 operate the largest number of operations when</p> <p>8 you look at the combined three airports in</p> <p>9 the DC area. It would be probably close with</p> <p>10 United.</p> <p>11 Q. Do you believe or do you have an</p> <p>12 opinion on whether brand loyalty has</p> <p>13 increased or decreased since the entrance of</p> <p>14 low-cost carriers into the market?</p> <p>15 A. Well, I haven't conducted a formal</p> <p>16 study of that, but what I would say is that</p> <p>17 over the period of time, as I show, I think</p> <p>18 it's in maybe Exhibit 1 of my report, the</p> <p>19 share of domestic-only passengers traveling</p> <p>20 on the -- what are now the GNC, says decline</p> <p>21 significantly over time. So to the extent</p> <p>22 there's brand loyalty, I think that's a very</p> <p>23 individual question.</p> <p>24 Q. When you say "individual</p> <p>25 question," you mean individual to the</p> <p style="text-align: right;">Page 83</p>	<p>1 to choose a flight based on price than back</p> <p>2 then?</p> <p>3 A. I think it really depends on the</p> <p>4 individual. I can't generalize one way or</p> <p>5 another to all individuals. I think the</p> <p>6 decision -- the travel decision is highly</p> <p>7 individualized.</p> <p>8 Q. So if I understand your point, is</p> <p>9 that to one customer at a particular point in</p> <p>10 time, a \$50 fare difference might be</p> <p>11 significant and another person, a hundred</p> <p>12 dollar fare difference might not be</p> <p>13 significant for that same flight at that same</p> <p>14 time? It's individualized.</p> <p>15 A. It's individualized, and it would</p> <p>16 even depend on the purpose of the trip. You</p> <p>17 know, if you have to fly to a meeting and you</p> <p>18 need to be there at a certain time, you may</p> <p>19 be willing to pay a little bit more for a</p> <p>20 flight that gets you exactly where you want</p> <p>21 to be at the right time, maybe not having to</p> <p>22 make a connection.</p> <p>23 You may be someone who wants a</p> <p>24 little extra leg room or something like that.</p> <p>25 You know, there's a lot of factors that go</p> <p style="text-align: right;">Page 85</p>

<p>1 into the decision of which particular ticket 2 you're going to buy. 3 Q. Are you familiar with -- I'm 4 definitely going to butcher these names -- 5 the Herfindahl-Hirschman Index? 6 A. I am, yes. 7 Q. It's also sometimes referred to as 8 the HHI index? 9 A. I am, yes. 10 Q. May I please refer to it as that 11 during this deposition? 12 A. Absolutely. 13 Q. What is the HHI index? 14 A. It is a measure of what is 15 referred to by some as concentration, and it 16 is computed as the sum of squared market 17 shares of -- once you've defined whatever 18 market you're looking at, you would take the 19 market shares of each of the individual 20 participants, you would square them and you'd 21 sum them. So it's a number between, you 22 know, one and 10,000. 23 Q. Okay. Do you believe that it's a 24 credible industry source for experts like 25 yourself?</p> <p style="text-align: right;">Page 86</p>	<p>1 instrument. 2 Q. And why do you believe it's blunt? 3 A. Because it doesn't capture the 4 nature of competition, and so when you have 5 carriers or different competitors that have 6 vastly different cost structures -- you know, 7 HHI treats every competitor equally, and when 8 you have carriers that have much, much lower 9 costs than others or firms that have much, 10 much lower costs than others, they need not 11 have a large market share to have a 12 substantial influence on prices in that 13 market. 14 Q. Okay. Have you ever used the HHI 15 index in your efforts in consulting in the 16 airline industry? 17 A. Have I used the HHI? I may have 18 used the HHI. I know that I have computed 19 HHIs before -- often in response to maybe 20 someone else has computed an HHI. But, yeah, 21 I don't discount the fact that -- as I say, 22 it's a measure. It's not like it's out of 23 left field. It's a measure that's often used 24 or sometimes used, and I think it's kind of a 25 blunter instrument because it's not as</p> <p style="text-align: right;">Page 88</p>
<p>1 A. I don't know what you mean by 2 "source." It's not a source. It's a 3 calculation. 4 Q. It's a credible industry tool that 5 experts like yourself use in the industry? 6 A. You know, I think there is debate 7 amongst economists as to the usefulness of 8 HHI as it applies to the airline industry. 9 Q. But you do, you see it as a tool 10 that is commonly used in -- for experts like 11 yourself in its industry? 12 A. In this industry? 13 You know, I think it's -- it's 14 less common in, I think, airline than other 15 industries. You know, I know that there are 16 guidelines as to HHI that are used by the DOT 17 -- sorry -- the DOJ and the FTC and the 18 Horizontal Merger Guidelines, but as it's 19 applied to the airline industry, I think many 20 economists believe that it is kind of a 21 limited utility in the airline industry. 22 Q. And what is your belief about its 23 utility in the airline industry? 24 A. I mean, it's one piece of 25 information, but I think it's a pretty blunt</p> <p style="text-align: right;">Page 87</p>	<p>1 nuanced as being able to actually understand 2 the nature of competition. 3 Q. Okay. Are you aware that one of 4 the experts in this case actually used the 5 HHI index in its analysis -- in the expert's 6 analysis? 7 A. I -- so I've looked at two 8 reports. I've looked at -- I've only been 9 asked to look at two reports, and those are 10 Dr. Vasigh and Dr. Phiroz. And if any of the 11 two of them was to look at the HHI, I suspect 12 it would have been Dr. Vasigh, given his 13 claims. But I don't recall. I could be 14 mistaken. I'd have to go back and look 15 through it. But I don't recall seeing 16 specifically an HHI calculation in this 17 report. But I could be -- I could have 18 missed it. 19 Q. So, as we sit here today, you 20 don't have any reason to criticize the use of 21 a HHI by either Dr. Vasigh or Dr. Phiroz in 22 this case? 23 A. Well, I would need to see what 24 they computed. Like if someone were to 25 say -- was to compute an HHI at Dallas Fort</p> <p style="text-align: right;">Page 89</p>



<p>1 Worth based off departures, for example -- I</p> <p>2 wouldn't actually think that's a particularly</p> <p>3 meaningful statistic because, you know, like</p> <p>4 that's -- that's -- that's -- what would be</p> <p>5 more, you know, useful -- not to suggest I</p> <p>6 endorse it in any, way shape or form the use</p> <p>7 of HHI, but, like, you often see people</p> <p>8 misusing HHI by applying it to the wrong</p> <p>9 metric.</p> <p>10 Q. But you don't have any reason to</p> <p>11 believe that's happened in this case,</p> <p>12 correct?</p> <p>13 A. I haven't -- I don't recall, as I</p> <p>14 sit here right now, seeing an HHI calculation</p> <p>15 by one of the other experts that I've been</p> <p>16 asked to look at, at least as I sit here</p> <p>17 right now.</p> <p>18 Q. So therefore you would have no</p> <p>19 reason to criticize the use of HHI in this</p> <p>20 case, as you sit here right now, based on</p> <p>21 what you know right now?</p> <p>22 A. Well, if you're asking me to -- to</p> <p>23 ask whether or not I would criticize a</p> <p>24 hypothetical HHI calculation, which I haven't</p> <p>25 seen, what I would say is that I would -- I</p> <p style="text-align: right;">Page 90</p>	<p>1 Q. Did you say "load factor"?</p> <p>2 A. I did, yes.</p> <p>3 Q. When you say "load factor," what</p> <p>4 do you mean?</p> <p>5 A. Load factor is a term in the</p> <p>6 industry which is formally defined as revenue</p> <p>7 passenger miles divided by available seat</p> <p>8 miles, RPMs over ASMs.</p> <p>9 You probably need me to define</p> <p>10 those as well.</p> <p>11 Q. Yeah, I have no idea what you just</p> <p>12 said.</p> <p>13 A. So we can look at it in kind of a</p> <p>14 simple term. So seat factor, which often is</p> <p>15 what people think about, is the percentage of</p> <p>16 seats that are filled on flights, and so when</p> <p>17 you say occupancy, you may be thinking of</p> <p>18 kind of, like, a seat factor. The statistics</p> <p>19 that are reported by airlines are calculated</p> <p>20 slightly differently, in that each seat is</p> <p>21 weighted by the number of miles that has been</p> <p>22 flown.</p> <p>23 And so the denominator of a load</p> <p>24 factor calculation is what are known as</p> <p>25 available seat miles, ASMs. Available seat</p> <p style="text-align: right;">Page 92</p>
<p>1 can't offer a specific criticism to it, as I</p> <p>2 sit here right now, but I would certainly</p> <p>3 reserve the right to offer my opinions about</p> <p>4 it after I've seen it. I wouldn't -- I</p> <p>5 wouldn't -- I certainly wouldn't endorse it</p> <p>6 at this juncture.</p> <p>7 MR. MUYSKENS: When you have time</p> <p>8 to break, give me 30 seconds to grab</p> <p>9 some allergy medicine?</p> <p>10 MR. TOBIN: Let's do it right now.</p> <p>11 No, go ahead. Do what you need to</p> <p>12 do.</p> <p>13 THE VIDEOGRAPHER: The time is</p> <p>14 11:04. We're off the record.</p> <p>15 (Recess taken at 11:04 a.m. to 11:07 a.m.)</p> <p>16 THE VIDEOGRAPHER: We're back on</p> <p>17 the record. The time is 11:07.</p> <p>18 BY MR. TOBIN:</p> <p>19 Q. Would you agree that flights</p> <p>20 today -- commercial air flights today have a</p> <p>21 higher occupancy rate than ten years ago?</p> <p>22 A. Than ten years ago. Probably a</p> <p>23 little bit more than ten years ago, yes. The</p> <p>24 load factors have trended up over time but</p> <p>25 they've kind of started to largely plateau.</p> <p style="text-align: right;">Page 91</p>	<p>1 miles are computed as the number of seats</p> <p>2 times the number of miles they've flown, and</p> <p>3 the numerator, RPMs, is what is known as</p> <p>4 revenue passenger miles, which are the number</p> <p>5 of miles flown by paying passengers. So</p> <p>6 that -- and divide one into the other, you</p> <p>7 get what is known as load factor.</p> <p>8 Q. So in that numerator, and I</p> <p>9 promise we're not going in any further into</p> <p>10 math than that because I'll be in trouble,</p> <p>11 but in that numerator, it sounds like there's</p> <p>12 certain passengers that are on an airline</p> <p>13 flight that could be excluded from that</p> <p>14 number, like, for instance, American Airlines</p> <p>15 employees who are flying for free. Is that</p> <p>16 fair or is that accurate?</p> <p>17 A. . So the non-revs, what are</p> <p>18 called in the industry, are airline employees</p> <p>19 typically, that are -- would be excluded from</p> <p>20 a load factor calculation.</p> <p>21 Q. But without question, American</p> <p>22 Airlines does get a benefit from being able</p> <p>23 to transport its employees from one location</p> <p>24 to the other to help it run its business,</p> <p>25 right?</p> <p style="text-align: right;">Page 93</p>

CONFIDENTIAL

<p>1 A. Sure. Yeah.</p> <p>2 Q. And, generally, on the major</p> <p>3 carriers, it's at least fair to say that</p> <p>4 flights are generally full these days?</p> <p>5 A. I don't know what you mean by</p> <p>6 "generally full." Depends on the night</p> <p>7 you're taking it, it depends on the day</p> <p>8 you're flying. It really depends. I mean,</p> <p>9 if you were to travel to Europe in February,</p> <p>10 you would find more seats empty than full,</p> <p>11 depending on the day you travel. So if you</p> <p>12 fly over the 4th of July weekend, it was a</p> <p>13 pretty busy weekend, so it really depends.</p> <p>14 Q. When was the last time you were on</p> <p>15 an American, United or Delta flight in the</p> <p>16 U.S. that wasn't substantially full?</p> <p>17 A. I mean, I don't wander the cabin</p> <p>18 to see how many seats are full, but I will</p> <p>19 grant -- I will admit that load factors</p> <p>20 industry-wide are, you know, hovering in the</p> <p>21 mid 80 percent range, which means that 15</p> <p>22 percent of flights on average are not taken.</p> <p>23 But, yeah, capacity is utilized, there's no</p> <p>24 doubt.</p> <p>25 Q. In that 80 percent mark, if I'm</p> <p style="text-align: right;">Page 94</p>	<p>1 right?</p> <p>2 A. I am, yes.</p> <p>3 Q. So there's been some discussion in</p> <p>4 your report and in the reports in this case</p> <p>5 about the situation where somebody books a</p> <p>6 flight -- for instance, let's use your Boston</p> <p>7 to DFW to San Antonio example -- and they</p> <p>8 book the flight Boston to San Antonio but</p> <p>9 they get off the flight in Dallas Fort Worth,</p> <p>10 you're aware that that scenario is a major</p> <p>11 issue in this case, correct?</p> <p>12 A. I am, yes.</p> <p>13 Q. Okay. And so in that scenario,</p> <p>14 it's at least your understanding, from having</p> <p>15 vast knowledge in the industry, that when</p> <p>16 that happens, American Airlines does</p> <p>17 everything it can to try to fill that seat</p> <p>18 from Dallas to San Antonio by either letting</p> <p>19 a non-rev person fly in the seat or by</p> <p>20 letting a standby passenger fly in the seat,</p> <p>21 that's the general practice of carriers like</p> <p>22 American, correct?</p> <p>23 A. There is a standby list, so that</p> <p>24 if it turns out that there's no-shows and</p> <p>25 this could be no-shows for reasons other than</p> <p style="text-align: right;">Page 96</p>
<p>1 understanding the math -- and please check me</p> <p>2 because there's a really good chance I'm</p> <p>3 not -- but the 80 percent mark, that number</p> <p>4 would actually be higher if you were counting</p> <p>5 non-revenue passengers who were also flying</p> <p>6 on those flights, correct?</p> <p>7 A. It can. The thing to keep in mind</p> <p>8 is that many employees that fly on -- for</p> <p>9 company business, for example, are jumpseat</p> <p>10 eligible. So some of them would fly -- like</p> <p>11 if you have pilot -- you often see a pilot</p> <p>12 come on to an airplane and he or she might be</p> <p>13 non-revving or dead-heading or whatever they</p> <p>14 might be doing, and they often go into the</p> <p>15 cockpit and sit in the jumpseat. So it</p> <p>16 depends.</p> <p>17 But yes, if there's non-revs that</p> <p>18 could add, you know, a percentage point or</p> <p>19 two, whatever it might be depending on the</p> <p>20 flight. And you'll also see sometimes flight</p> <p>21 attendants who are traveling on a non-rev</p> <p>22 basis sitting in the jumpseat as well, a</p> <p>23 flight attendant jumpseat.</p> <p>24 Q. And when you use the short form</p> <p>25 "rev," obviously you're referring to revenue,</p> <p style="text-align: right;">Page 95</p>	<p>1 obviously people who buy hidden-city tickets,</p> <p>2 they can -- people that are on the standby</p> <p>3 list can stand by for that seat.</p> <p>4 Q. And in your hypothetical, Boston</p> <p>5 to San Antonio, through Dallas Fort Worth, if</p> <p>6 someone were on that flight using a</p> <p>7 hidden-city ticket practice and exits the</p> <p>8 flight at DFW and does not take the second</p> <p>9 leg, American would try to fill those seats</p> <p>10 however it could?</p> <p>11 A. Well, I guess what I'm -- you seem</p> <p>12 to be maybe implicitly assuming that that</p> <p>13 happens to be the last available seat; but,</p> <p>14 you know, again, if flights are flying 85</p> <p>15 percent full, then seat may have gone empty</p> <p>16 anyhow. So it really just depends on the</p> <p>17 situation.</p> <p>18 Q. So it may or may not have</p> <p>19 mattered, I guess is your point?</p> <p>20 A. Yeah, it may not have mattered.</p> <p>21 Q. But if American is able to fill</p> <p>22 that seat, with either a standby passenger or</p> <p>23 somebody else that -- a non-rev passenger</p> <p>24 that it gets a benefit from, from</p> <p>25 transferring that person from Dallas to San</p> <p style="text-align: right;">Page 97</p>

25 (Pages 94 - 97)

CONFIDENTIAL

<p>1 Antonio, it's your understanding that the 2 Americans of the world certain endeavor to do 3 that, right? 4 A. They would -- if there's people 5 that are flying standby, they will -- and 6 there's available seats, they'll try to put 7 them on the flight. 8 Q. And it's common in the airline 9 industry, especially with large carriers like 10 American, that flights get overbooked, right? 11 A. You know, I think overbooking is 12 less common than it used to be because of the 13 denied boarding rules and the penalties on 14 denied boardings are -- I think it's less 15 common than it used to be because of the 16 denied boarding rules and the amount of 17 compensation that airlines sometimes now have 18 to pay when flights are oversold if a person 19 is involuntarily bumped. 20 And, so you know, you read of 21 these stories and hear of these stories of 22 sometimes an airline having to pay \$10,000 to 23 a passenger who was denied boarding or 24 something like that, which is obviously a 25 huge penalty.</p> <p style="text-align: right;">Page 98</p>	<p>1 factors. 2 Q. Okay. Because one less person is 3 on it and possibly even less luggage or 4 baggage is on it, right? 5 A. Well, definitely one less person. 6 As I understand how Skiplagged tries to 7 educate or inform passengers, they 8 essentially tell them not to bring luggage 9 other than a knapsack, but to the extent that 10 that knapsack weighs a couple pounds, sure. 11 Q. Okay. And that could actually 12 reduce fuel cost, hypothetically, on that leg 13 from Dallas Fort Worth to San Antonio, 14 correct? 15 A. It could. I'm not sure the 16 relevance of the question, but yeah, 17 hypothetically it could. 18 Q. Are you familiar with [REDACTED] [REDACTED] [REDACTED] 21 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p style="text-align: right;">Page 100</p>
<p>1 So I'm not saying that it doesn't 2 happen, but I can't tell you, as I sit here 3 right now, how frequently American overbooks 4 its flights. But my impression is that it's 5 less of an issue than it may have been some 6 years ago. 7 Q. Okay. Going back to your 8 hypothetical, Boston to San Antonio through 9 DFW, if hypothetically that DFW to San 10 Antonio leg was oversold, overbooked and a 11 passenger gets off at Dallas Fort Worth 12 through using a hidden-city ticketing method, 13 that helps the airline actually reduce the 14 amounts that that second leg was overbooked, 15 correct? 16 A. Hypothetically, it's possible that 17 it could, yes. 18 Q. Okay. And hypothetically going 19 for the other scenario, where the flight is 20 not overbooked and there are actually excess 21 seats in that second leg from Dallas Fort 22 Worth to San Antonio, if one less person 23 flies on that flight, it reduces the weight 24 of the flight, correct? 25 A. A reduced weight from lower load</p> <p style="text-align: right;">Page 99</p>	<p>1 Q. Okay. 2 A. I remember [REDACTED] [REDACTED] 4 Q. [REDACTED] 5 THE STENOGRAPHER: Hold on. We 6 need one at a time. 7 [REDACTED] [REDACTED] 9 A. Like, but this was -- again, back 10 in, like, [REDACTED] [REDACTED]. I remember something -- I 12 don't think the [REDACTED] [REDACTED] 14 Q. No, but you remember the point was 15 that American figured out if they took olives 16 off the salad it would save them a bunch of 17 money? 18 A. I do remember a story involving 19 [REDACTED], but, 20 you know, there's a lot of stories in the 21 airline industry. 22 Q. Do you remember the point of that 23 story being [REDACTED] [REDACTED] [REDACTED]</p> <p style="text-align: right;">Page 101</p>



<p>1 A. I remember there was [REDACTED] [REDACTED] [REDACTED]</p> <p>4 Q. Okay. We were talking a little 5 bit about this earlier, but I believe, if I 6 understand, you know, part of the general 7 points of your report, it's that -- and your 8 opinions in this case, it's that if 9 hidden-city tickets and hidden-city ticketing 10 facilitators are not around, that doesn't 11 necessarily lead to the conclusion that the 12 consumers of those hidden-city ticketing 13 services would automatically buy the direct 14 flight, in your example, from Boston to 15 Dallas Fort Worth, at the higher price, 16 right?</p> <p>17 A. I'm not sure I understand your 18 question. Could I have it read back or?</p> <p>19 Q. Let's at least talk about the 20 assumptions in your hypothetical. Okay? 21 And the hypothetical being where somebody 22 uses a hidden-city ticket practice from going 23 from Boston to San Antonio, but they 24 actually -- there's an intermediate leg where 25 they get off the flight in Dallas Fort Worth?</p> <p style="text-align: right;">Page 102</p>	<p>1 because I was -- that Skiplagged wasn't being 2 transparent about it.</p> <p>3 That's kind of really, I think, 4 the thrust of my report or one of the big 5 thrusts of my report. So I just want to make 6 sure kind of when we talk about these, we 7 understand that central, I think, to my 8 opinions, is that Skiplagged isn't being 9 particularly transparent and honest to the 10 consumer as to what they're getting.</p> <p>11 MR. TOBIN: Objection, 12 nonresponsive.</p> <p>13 BY MR. TOBIN:</p> <p>14 Q. I understand what you described in 15 your report. We'll get into that scenario in 16 a minute.</p> <p>17 But let's stick with this 18 hypothetical, and I'm going to add some facts 19 to the hypothetical. Okay?</p> <p>20 Let's say that this particular 21 consumer bought this fare that you're talking 22 about from Boston to San Antonio through 23 Dallas Fort Worth for \$300, okay, and let's 24 assume at the exact same time they bought 25 that fare there was, on the same flight, a</p> <p style="text-align: right;">Page 104</p>
<p>1 We've talked about that so far, 2 right?</p> <p>3 A. Yes.</p> <p>4 Q. And if there's a hidden-city 5 ticket consumer involved in that scenario, 6 the assumption is, and you pointed out in 7 your report, this is not always the case, but 8 the assumption is they decided to take on 9 that hidden-city ticket fare because they 10 could save money over just buying another 11 option of buying an American Airlines flight 12 directly from Boston to Dallas, correct?</p> <p>13 A. Well, I think -- you might be 14 mischaracterizing my report a little bit. I 15 think one of the big thrust of my report is 16 that often these are promoted as fare 17 savings, but when one actually adds in, for 18 example, a service fee that may be associated 19 with the hidden-city ticket or when one 20 actually looks at other tickets that were 21 available, that, for example, in this case, 22 that Skiplagged didn't offer to me that 23 that -- I am, as a consumer, misled into 24 thinking I am buying a lower price fare when, 25 in fact, I'm actually having to pay more,</p> <p style="text-align: right;">Page 103</p>	<p>1 fare offered from American Airlines that 2 terminates in Dallas Fort Worth from Boston 3 to Dallas Fort Worth for \$500. Okay.</p> <p>4 You with me so far?</p> <p>5 A. I am, yes.</p> <p>6 Q. You would admit, at least in that 7 scenario, the hidden-city ticket consumer had 8 an option to save money by going through -- 9 and let's say there was a \$30 service fee on 10 it, so net it was 330 to the consumer. You 11 would admit under that hypothetical that 12 there was a savings opportunity for the 13 consumer by purchasing the facilitated 14 hidden-city ticket fare, correct?</p> <p>15 A. If the passenger was willing to 16 fraudulently purchase a ticket that violated 17 American's contract of carriage and was 18 willing to forgo other benefits that come 19 with buying a nonfraudulent ticket, there is 20 a money savings in that hypothetical, again, 21 and I'm accepting only as a hypothetical 22 because my own experience has been when 23 exploring Skiplagged, that it's not 24 particularly transparent or accurate in terms 25 of the prices that were available.</p> <p style="text-align: right;">Page 105</p>

<p>1 But for your -- purposes of this 2 hypothetical, subject to that passenger 3 willing to fraudulently represent what their 4 intentions were, then they could realize that 5 savings. 6 Q. Are you a lawyer, Dr. Lee? 7 A. I'm not a lawyer, no. 8 Q. Are you an expert on what 9 constitutes fraud or doesn't constitute 10 fraud? 11 A. I'm not using the term "fraud" in 12 any type of legal framework. I'm merely 13 saying that I know that when I purchase a 14 ticket, I'm entering into a contract with 15 carriage with an airline, and one of the 16 things that the contract of carriage at 17 American Airlines, and I think most other 18 airlines, prohibitively -- specifically 19 prohibit -- specifically prohibit hidden-city 20 ticketing, using hidden-city tickets. 21 Q. Have you been aware of whether 22 fraud is an allegation in this lawsuit or 23 not? 24 A. Again, I'm not using fraud -- 25 Q. Sir, are you aware of whether</p> <p style="text-align: right;">Page 106</p>	<p>1 customer in that hypothetical would have 2 those options and would not be obligated to 3 buy the \$500 ticket to Dallas, correct? 4 A. I don't think any consumer is 5 obligated to buy any particular ticket. 6 Q. I think we've covered this, but 7 this hidden-city ticket practice, you're 8 obviously aware that there are instances 9 where consumers just do this on their own 10 without being facilitated by any service such 11 as what my client offers? 12 A. I would agree with that. 13 Q. In fact, did American share with 14 you that [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 20 A. I haven't received any of that 21 information, no. 22 Q. Do you believe that American, 23 Delta and United have over 50 percent of the 24 market share of U.S. domestic flights 25 combined between the three of them?</p> <p style="text-align: right;">Page 108</p>
<p>1 fraud is an allegation in this lawsuit or 2 not? 3 A. I think I've seen in the Complaint 4 the use of the term "fraud," and I'm not 5 using it, to be perfectly clear, in a legal 6 definition. I'm just saying -- I'm 7 misrepresenting to American Airlines if I do 8 that, and my intentions. 9 Q. So what I'm trying to get back to 10 is what I understand one of the points that I 11 believe you made in your report, is that if 12 the person didn't -- in this hypothetical, 13 did not have the hidden-city option, okay, 14 and did not have someone like my client 15 Skiplagged facilitating a hidden-city ticket 16 and it chose not to practice the hidden-city 17 practice, it didn't necessarily have to buy 18 the ticket for \$500 to Dallas, right, it 19 would have other options, like you've 20 described in your report, such as low-cost 21 carriers or maybe trying to buy a different 22 time and ticket, correct? 23 A. There are a multitude of options 24 to get from here to Dallas. 25 Q. So you would agree that the</p> <p style="text-align: right;">Page 107</p>	<p>1 A. Probably. They probably do, yeah. 2 I mean, you know, as you can see in 3 Exhibit 1, they have 52 percent share of 4 domestic-only passengers, and their average 5 gauge tends to be lower than the remaining 6 carriers, so it would stand to reason that 7 they probably do. 8 Q. What do you mean by "gauge"? 9 A. The number of seats on an 10 aircraft. 11 Q. Now, if we look at Exhibit 5 on 12 page 13 of your report. 13 A. Okay. 14 Q. Now, this exhibit talks about -- 15 it, in part at least shows low-cost carriers' 16 share of the market in hub cities, right? 17 A. It's their share of domestic O&amp;D 18 passengers. 19 Q. Are there any large hubs in the 20 U.S. that are not listed on this graph? 21 And I say "hubs." I'm sorry, I 22 mean hub cities. 23 A. Actually, now that I look at this, 24 Seattle I think would now classify as a large 25 hub city, as Delta is there.</p> <p style="text-align: right;">Page 109</p>

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<p>1 Q. Anyone else?</p> <p>2 A. I mean, I think with the exception</p> <p>3 of Seattle, this is generally pretty</p> <p>4 complete. I could be missing one, but I</p> <p>5 think this is largely complete.</p> <p>6 Q. Now, my understanding of your</p> <p>7 Exhibit 5 is, for instance, when you list New</p> <p>8 York, you're not just talking about New York</p> <p>9 LaGuardia, you're talking about multiple</p> <p>10 airports within New York, right?</p> <p>11 A. For New York, yeah. This would</p> <p>12 be, as it says in the footnote, both JFK, New</p> <p>13 York and LaGuardia.</p> <p>14 Q. Okay. And so why is -- I don't</p> <p>15 know if this is terribly important, but I'm</p> <p>16 curious. Why is, like, is it Icelip or</p> <p>17 Islip?</p> <p>18 A. Islip.</p> <p>19 Q. Yeah, why is Islip not included in</p> <p>20 New York?</p> <p>21 A. So that gets into a whole question</p> <p>22 of geographic market definition, and Islip,</p> <p>23 while there is -- you know, it certainly</p> <p>24 serves the parts of Long Island, it tends to</p> <p>25 be a little bit further out, so it's not</p> <p style="text-align: right;">Page 110</p>	<p>1 Q. I understand your distinction on</p> <p>2 New York. But I think you understand my</p> <p>3 question as it relates to most markets, like,</p> <p>4 for example, Dallas, you'd at least agree</p> <p>5 that DFW is the most significant airport or</p> <p>6 port in the DFW area compared to Dallas Love</p> <p>7 Field, correct, as far as commercial airline</p> <p>8 travel.</p> <p>9 A. Well, I'm not quite sure I would</p> <p>10 agree. DFW is a larger airport. It is also</p> <p>11 an international airport.</p> <p>12 Q. It's got a much more -- it's got a</p> <p>13 much higher volume of flights going in and</p> <p>14 out of DFW than Dallas Love, right?</p> <p>15 A. It absolutely does, but it would</p> <p>16 be a huge mistake to look at -- particularly</p> <p>17 if we're looking at domestic competition. I</p> <p>18 mean, it would be a fatal mistake to look</p> <p>19 only at DFW and not consider Dallas Love</p> <p>20 field, because Southwest has such a huge</p> <p>21 competitive impact on competition airfares in</p> <p>22 the Dallas area and to disregard all of their</p> <p>23 service because it happens to be a different</p> <p>24 airport and one that's actually much closer</p> <p>25 to downtown Dallas than DFW, that would be a</p> <p style="text-align: right;">Page 112</p>
<p>1 generally thought of as being one of the</p> <p>2 primary New York City airports. Like in the</p> <p>3 same way that maybe Stewart is as well.</p> <p>4 Q. So when you say Washington, you're</p> <p>5 considering all three major airports within</p> <p>6 the Washington-Baltimore area including BWI,</p> <p>7 Dulles and Reagan?</p> <p>8 A. I am.</p> <p>9 Q. What is within LA when you say Los</p> <p>10 Angeles in this exhibit?</p> <p>11 A. That would be LAX, Long Beach and</p> <p>12 Burbank.</p> <p>13 Q. And so if you analyze this same</p> <p>14 data and only the largest, most significant</p> <p>15 airport in each of these hub cities, the</p> <p>16 percentage of low-cost carriers' share of</p> <p>17 domestic O&amp;D passengers would go down,</p> <p>18 correct?</p> <p>19 A. Well, not sure what you mean by</p> <p>20 the largest and most significant airport.</p> <p>21 For example, in New York.</p> <p>22 You know, are you referring to,</p> <p>23 like, Newark, is that less significant than</p> <p>24 the LaGuardia or JFK, I mean, these are all</p> <p>25 very large airports.</p> <p style="text-align: right;">Page 111</p>	<p>1 huge mistake in my opinion.</p> <p>2 Q. Granted, you're telling me that my</p> <p>3 hypothetical is fatal, but indulge me for a</p> <p>4 minute.</p> <p>5 Let's say we made, in your words,</p> <p>6 this fatal mistake and only counted the</p> <p>7 largest airport with the most traffic in that</p> <p>8 particular city, then these percentages on</p> <p>9 your graph in Exhibit 5 would go down</p> <p>10 significantly, correct?</p> <p>11 A. Some would go down.</p> <p>12 Q. Most would go down, wouldn't they?</p> <p>13 A. I'm not so sure that -- there's a</p> <p>14 lot of service at LAX by lower-cost carriers.</p> <p>15 So I'm not sure that would have a meaningful</p> <p>16 impact. And I'm not sure what would happen</p> <p>17 in New York, because, for example, if one</p> <p>18 were to look at JFK, JetBlue -- you know, the</p> <p>19 focus of their operations in New York is at</p> <p>20 JFK.</p> <p>21 So, again, I don't accept your</p> <p>22 general proposition. I'm not saying that at</p> <p>23 some places, like, for example, Phoenix, I'm</p> <p>24 not sure it would make a difference there.</p> <p>25 At DFW, at Dallas I think it would make a</p> <p style="text-align: right;">Page 113</p>

CONFIDENTIAL

<p>1 difference because you would be excluding, as  2 I said, you'd be making this fatal error of  3 excluding Southwest.  4 Q. So if I'm understanding this  5 graph, and I understand you say it excludes  6 Seattle, which should be included, but if I'm  7 understanding this graph, this is showing  8 [REDACTED]  9 [REDACTED]  10 [REDACTED]  11 [REDACTED]  12 A. That's incorrect, because, as we  13 talked about, many low-cost carriers are  14 major --  15 THE STENOGRAPHER: Keep your voice  16 up. Major what?  17 THE WITNESS: Are major airlines.  18 BY MR. TOBIN:  19 Q. Let me rephrase my question, then.  20 You understand I'm talking about  21 Delta, United and American, right? I mean  22 Delta, United and American are [REDACTED]  23 [REDACTED] correct?  24 A. Well, I didn't -- your question  25 was unclear. Maybe if you rephrase the</p> <p style="text-align: right;">Page 114</p>	<p>1 [REDACTED]  2 [REDACTED]  3 [REDACTED]  4 [REDACTED], correct?  5 A. Could you just repeat the  6 question?  7 Q. That [REDACTED]  8 [REDACTED]  9 [REDACTED]  10 [REDACTED]  11 right?  12 A. That's not correct, because [REDACTED]  13 [REDACTED]  14 Q. Okay. Well, [REDACTED]  15 [REDACTED]  16 percent, you would agree with me, right?  17 A. I would agree with that, of  18 domestic-only passengers.  19 Q. Now, on that same page, at the top  20 of the page, you see the [REDACTED]  21 [REDACTED] sentence?  22 A. Yes, I do.  23 Q. And it goes on to say, [REDACTED]  24 [REDACTED]  25 [REDACTED]</p> <p style="text-align: right;">Page 116</p>
<p>1 question, I can provide the answer you're  2 looking for.  3 But as you phrased your last  4 question and referred to major airlines, I  5 disagreed with your proposition.  6 Q. Okay. But let me make sure I can  7 built a predicate here.  8 So Delta, American and United are  9 [REDACTED]  10 [REDACTED]; is that correct?  11 A. [REDACTED]  12 [REDACTED]  13 Q. Okay. Your Exhibit says [REDACTED]  14 [REDACTED] correct?  15 A. It does.  16 Q. So I assume what you're trying to  17 depict is [REDACTED]  18 [REDACTED]?  19 A. That's correct.  20 Q. And we've established that  21 American, United and Delta are not low-cost  22 carriers, correct?  23 A. That is correct.  24 Q. So by extrapolation, [REDACTED]</p> <p style="text-align: right;">Page 115</p>	<p>1 [REDACTED]  2 [REDACTED]  3 [REDACTED]  4 THE STENOGRAPHER: Three rounds?  5 BY MR. TOBIN:  6 Q. [REDACTED] I  7 apologize.  8 What's your basis for that  9 statement?  10 A. You mean beyond Exhibit 5?  11 Q. Yeah. Well, I guess you're saying  12 Exhibit 5 is your basis for that statement.  13 Is there anything else that you have that --  14 as evidence?  15 A. I think -- I mean, Exhibit 5 is my  16 basis for that statement. But, you know,  17 I've been studying this industry for the last  18 26 years, or whatever it is, and I've  19 witnessed it firsthand, and all of the data  20 reflects that.  21 Q. Now, you've made the point, I  22 believe in your report, that airlines  23 generally have relatively thin profit  24 margins, correct?  25 A. That -- yeah, airlines compared to</p> <p style="text-align: right;">Page 117</p>

<p>1 other industries tend to have thinner profit 2 margins. I would agree with that statement, 3 yes. 4 Q. Okay. But that's been the case 5 since deregulation, right? I mean, that's 6 nothing new in the past five, ten years, 7 correct? 8 A. Yeah, I mean, it is a really, 9 really tough business. 10 Q. So they've always had thin profit 11 margins, at least since deregulation? 12 A. You know, there's some years that 13 are better than others. But, yeah, they have 14 not been amongst the most profitable by any 15 stretch of the imagination, parts of kind of 16 the broader U.S. economy. It's a very 17 competitive business. 18 Q. I guess the point is, they had 19 thin profit margins even before low-cost 20 carriers started taking a larger percentage 21 of the market as your Exhibit 5 tries to 22 argue, right? 23 A. I wouldn't quite agree with that. 24 I think that prior to the expansion of 25 low-cost carriers, airlines were doing -- the</p> <p style="text-align: right;">Page 118</p>	<p>1 A. It's a lot tougher now than it was 2 back then. But it's a tough business. 3 Q. And was then? I mean, if we're to 4 agree with what you say, you would agree it 5 was tough back then as well, right? 6 A. I mean, yeah, there's degrees of 7 toughness, I guess is what I'd say, but it 8 has become extremely competitive. 9 Q. Right. But you were the one that 10 compared it to the profit margins to other 11 industries, and the profit margins even 12 before the low-cost carriers started making a 13 significant impact [REDACTED], 14 were still lower than these other industries 15 you're talking about, right? 16 A. There's actually an exhibit we can 17 look at if you'd like. It's a tough 18 business. I mean, there's a lot of 19 pressures. There's fuel price volatility, 20 there's geopolitical risks. It's highly 21 cyclical. It's a tough business. 22 Q. And those pressures that you just 23 described all existed before low-cost 24 carriers started taking a significant -- a 25 more significant portion of the market as</p> <p style="text-align: right;">Page 120</p>
<p>1 large network carriers such as American, 2 Delta and United, and of course, going back 3 in time now to include the predecessor 4 carriers, you know, they -- they -- they -- 5 there was less downward pressure on prices 6 back then and their profits tended to be a 7 little bit higher. 8 Q. Okay. But you just made the 9 observation that the airline industry 10 currently has thinner profit margins than 11 other industries you could compare it to, 12 correct? Do you remember that testimony? 13 A. I do, yes. 14 Q. And that was the same before the 15 low-cost carriers started taking a 16 significant market share, the profit margins 17 may have been larger but they were still 18 thinner compared to other industries, 19 correct? 20 A. There's no doubt that the growth 21 of low-cost carriers has pressured profits, 22 but airlines are a very tough business, yes. 23 Q. Even before the low-cost carriers 24 started making this pressure that you just 25 described, correct?</p> <p style="text-align: right;">Page 119</p>	<p>1 [REDACTED], correct? 2 A. There have been -- yes, those are 3 factors that have always -- have made the 4 airline business challenging. 5 MR. TOBIN: I'm going to need a 6 short break. 7 THE VIDEOGRAPHER: The time is 8 11:48. We're going off the record. 9 (Recess taken at 11:48 a.m. to 12:26 p.m.) 10 THE VIDEOGRAPHER: We're back on 11 the record. The time is 12:26. 12 BY MR. TOBIN: 13 Q. Okay. Dr. Lee, let me just make 14 sure I understand. You have not conducted an 15 analysis of what American Airlines' share is 16 at any particular airport, correct? 17 A. As part of my report here? 18 Q. Correct. 19 A. Not as part of this report, no. 20 Q. Okay. For instance, I believe 21 Dr. Vasigh had, and I remember the exact 22 number, but I believe he had calculated a 23 percentage of American's share -- market 24 share at Dallas Fort Worth. 25 As part of your retention here,</p> <p style="text-align: right;">Page 121</p>



<p>1 you don't have any reason to either agree or 2 disagree with that number, right? 3 A. I'm not sure actually that 4 Dr. Vasigh has calculated anything. If you 5 point me towards the part of his report, 6 maybe you could refresh my memory. I saw him 7 maybe cite some statistic that was someone 8 else's statistic, but I don't think I saw any 9 calculations that Dr. Vasigh performed. 10 Q. Okay. Maybe calculation was a 11 poor chose of word. 12 But you saw where he cited 13 percentage of market share at specific 14 airports, correct? 15 A. Maybe you can point me to his -- 16 part of his report, specifically, because... 17 (Exhibit 2, Hidden-city travel and its 18 impact on passengers, implications for the 19 traveling public, Dr. Bijan Vasigh, marked 20 for identification.) 21 BY MR. TOBIN: 22 Q. I've handed you Exhibit 2. 23 Do you recognize that as 24 Dr. Vasigh's report that you reviewed in this 25 case?</p> <p style="text-align: right;">Page 122</p>	<p>1 clear, at least from the way it's been quoted 2 here, what that 84 percent is computed on. 3 Q. Let's pick each and every one of 4 those that you just listed. 5 Do you have reason to believe that 6 American does not currently have 84 percent 7 of the market share in any one of those 8 categories? 9 A. I would have to do the calculation 10 myself to determine what it is. Again, it's 11 just -- he's quoting an Airport World 12 article, looking at Footnote 8, and, so, 13 again, I would just need to independently 14 verify it. 15 Q. Okay. I'll tell you what, give me 16 every single reason and piece of evidence 17 that you have to disagree with the statement 18 in Dr. Vasigh's report that "American 19 currently has about 84% of the market share 20 at DFW, making it the largest carrier at the 21 airport." 22 A. I don't disagree with the 23 proposition that American is the largest 24 carrier at DFW. But all I'm saying, and I 25 think you're asking if I agreed with the 84</p> <p style="text-align: right;">Page 124</p>
<p>1 A. I do, yes. 2 Q. Okay. If you could turn to page 3 10 of the report. 4 You see in the first full 5 paragraph, last sentence, "American currently 6 has about 84% of the market share at DFW, 7 making it the largest carrier at the 8 airport"? I guess he cites to this Airport 9 World. 10 You don't have any reason to 11 disagree with that sentence, correct? 12 A. Well, only in the sense that I 13 haven't validated the statistic, and it's not 14 a hundred percent clear from at least the 15 quote here what this market share is 16 referring to. It just says "market share." 17 It doesn't say what the market share was. 18 Q. It says "market share at DFW." 19 You understand DFW to be DFW 20 International Airport, right? 21 A. I understand that, but it doesn't 22 say what the 84 percent is of. Is it of 23 daily departures? Is it of destinations? Is 24 it of seats? Is it of O&amp;D passengers? Is it 25 of domestic-only passenger? It's just not</p> <p style="text-align: right;">Page 123</p>	<p>1 percent number, I said I don't know from what 2 is written here how that is calculated. So 3 maybe it's 81. Maybe it's 85. I'm just 4 not -- I'd have to go back and independently 5 verify what it is. 6 Q. Yeah. But my question is, do you 7 have any evidence or reason to disagree with 8 this statement? 9 A. Well, I'm neither agreeing or 10 disagreeing. I'm just telling you that it is 11 not defined how that -- what that market 12 share is of. 13 MR. TOBIN: Objection, 14 nonresponsive. 15 BY MR. TOBIN: 16 Q. Are you going to answer my 17 question. My question is, do you have any 18 evidence -- because I can get a judge to make 19 you answer my question. 20 Do you have any evidence that 21 supports you disagreeing with that statement 22 that we've just been talking about? 23 A. I said I'm neither agreeing or 24 disagreeing. What I'm telling you is that if 25 someone tells me that a market share is 84</p> <p style="text-align: right;">Page 125</p>

CONFIDENTIAL

<p>1 percent, my question is going to be market 2 share of what?</p> <p>3 Q. Do you have any evidence to 4 disagree with this statement, supports 5 disagreement with that statement?</p> <p>6 A. I'm not --</p> <p>7 Q. Yes or no?</p> <p>8 A. I'm neither agreeing or 9 disagreeing. All I'm telling you is that as 10 a person who spends their life analyzing 11 airline data, I want to be a little bit more 12 precise and understand what this market share 13 calculation is of.</p> <p>14 Q. Have you ever heard the term "hub 15 premium"?</p> <p>16 A. I have heard that term.</p> <p>17 Q. Is that an industry term of art?</p> <p>18 A. It's a term that has been used in 19 the airline industry.</p> <p>20 Q. What do you believe it means?</p> <p>21 A. Hub premium -- you know, different 22 people have used it different ways. I tend 23 to think of hub premium as for a carrier that 24 operates a hub, whether or not they charge 25 higher prices -- I would say probably per</p> <p style="text-align: right;">Page 126</p>	<p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED].</p> <p>7 Q. [REDACTED] 8 A. [REDACTED] 9 [REDACTED]</p> <p>10 Q. Would you agree with Dr. Phiroz's 11 statement, at least to the extent that 12 airlines at their hubs receive less 13 competition than at a nonhub?</p> <p>14 A. Not at all. As I've shown in my 15 report, you know, I think I have another 16 exhibit, I'm happy to explain. But, for 17 example, Exhibit 9 of my report shows [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>25 Q. So, for instance, you do not</p> <p style="text-align: right;">Page 128</p>
<p>1 mile -- for passengers traveling to and from 2 the hub, as opposed to passengers that are 3 traveling over or through the hub.</p> <p>4 Q. Okay. Do you believe American 5 currently does that practice?</p> <p>6 A. Well, as I've shown in my report, 7 there is no evidence of hub premium, and I 8 could happily point you to the exhibit, if 9 you'd like to talk --</p> <p>10 Q. Are you talking about the one on 11 page 9. Oh, no, sorry, that was a --</p> <p>12 A. I think it's -- I think it's page 13 16, Exhibit 7.</p> <p>14 Q. I think your point is, the data 15 that you analyze -- let me just make sure I 16 understand your point.</p> <p>17 [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>21 A. That's correct. Is that the -- 22 you know, if anything, if I -- you know, [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p style="text-align: right;">Page 127</p>	<p>1 believe that American faces less competition 2 in Dallas than it does in Salt Lake City?</p> <p>3 A. Well, I think Dallas is incredibly 4 competitive. As you can see from Exhibit 9, 5 [REDACTED] [REDACTED]. I haven't looked at Salt 6 Lake City, but Salt Lake City would be 7 [REDACTED], with respect to 8 people traveling from Salt Lake City via DFW 9 to other parts on American's network.</p> <p>10 Q. Give me the name of an American 11 hub city?</p> <p>12 A. Dallas.</p> <p>13 Q. Give me the name of an American 14 nonhub city, where American actually has at 15 least a portion of the market share?</p> <p>16 A. We can go with Salt Lake City.</p> <p>17 Q. Okay. So do you believe that 18 American is every bit as competitive -- or I 19 should say other airlines are every bit as 20 able to compete with American in Dallas as 21 they are in Salt Lake City?</p> <p>22 A. Dallas is intensively competitive.</p> <p>23 Q. Yes or no, to my question. I can</p> <p style="text-align: right;">Page 129</p>

<p>1 have the court reporter read my question 2 back. It was a simple yes-or-no question. 3 Could you please read it back. 4 THE STENOGRAPHER: I'll have to 5 check it. 6 BY MR. TOBIN: 7 Q. Let me ask the question, then. 8 Do you believe that other carriers 9 have -- are every bit as competitive with 10 American in Dallas just as they are in Salt 11 Lake City? 12 A. It would depend on the place 13 you're going to from Salt Lake City, but 14 yeah, I would think that, you know, Dallas is 15 super competitive. You know, you're in 16 Southwest's backyard as well, and there's a 17 lot of low-cost competition there. Probably 18 more in Dallas than there might be in Salt 19 Lake City. 20 Q. So you believe the answer to my 21 question is yes? 22 A. I believe that American faces 23 intense competition at Dallas, and they face 24 intense competition in Salt Lake City. 25 Q. Okay. Now, for instance, Section</p> <p style="text-align: right;">Page 130</p>	<p>1 I think that in his report he is almost 2 taking it at face value that these 3 hidden-city tickets that are being sold are 4 actually providing consumers with a fare 5 savings where, at least in my experience from 6 spending some time on the Skiplagged website, 7 my experience was that because of the 8 misleading practices, it wasn't providing the 9 lowest fair. 10 Q. Same question as to Section B, 11 [REDACTED] 12 [REDACTED] It's a bit of a tongue 13 twister. But that section, would you agree, 14 it's not a direct critique on either 15 Dr. Vasigh or Dr. Phiroz's opinions? 16 A. I'm not sure I would fully agree 17 with that. I'm not sure I would agree with 18 that. I think that this is a response to 19 them. As you can see from the cited 20 footnotes. You know, just at the first 21 paragraph of Footnote 24, I'm explaining -- 22 like there's a predicate assumption in their 23 reports, that the reason for the existence of 24 Skiplagged and hidden-city tickets is to kind 25 of circumvent these monopoly positions, as</p> <p style="text-align: right;">Page 132</p>
<p>1 C in your report, it talks about 2 [REDACTED] 3 [REDACTED] is that fair? 4 MR. MUYSKENS: Are you on 30? 5 MR. TOBIN: Yes, I am. 6 A. That's correct. 7 BY MR. TOBIN: 8 Q. Now, generally, I'm understanding 9 that that section is not a critique of 10 Dr. Vasigh's or Dr. Phiroz's reports but 11 rather something in addition that you're 12 offering about the case; is that correct? 13 A. Well, I do think that -- that -- 14 that Dr. Vasigh, when he speaks at 15 hidden-city tickets is not really looking at 16 the full picture, and what I'm explaining 17 here is that when one actually looks at the 18 complete picture of, you know, the products 19 that Skiplagged is putting out there in the 20 marketplace, if passengers were actually 21 fully aware -- or consumers were fully aware 22 of how misleading they can be, then it really 23 changes the whole calculus, I think, that 24 he's performing in his report. 25 So it's not a direct critique, but</p> <p style="text-align: right;">Page 131</p>	<p>1 they say that -- how airlines have their hub 2 airports. And what this is describing is no, 3 there's actually a much more innocuous reason 4 why these exist, and so it's kind of 5 providing a counterargument to Dr. Vasigh. 6 But I would disagree with your 7 statement. 8 Q. Okay. Well, let's go to page 27 9 in Section B. And you're talking about the 10 evidence reflects [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 A. Yes. 17 Q. I'm sorry if I wasn't completely 18 following that, and I see your footnote, but 19 it directs me to other footnotes. 20 So if you can just tell me, what 21 is the basis for that statement or the 22 evidence that you're relying on for that 23 statement? 24 A. Are you talking about the sentence 25 that begins --</p> <p style="text-align: right;">Page 133</p>



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<p>1 Q. With "rather"?</p> <p>2 A. "Rather, they reflect"?</p> <p>3 Q. Correct.</p> <p>4 A. Well, I think I describe -- in</p> <p>5 that particular thing I'm referring you back</p> <p>6 to the earlier analysis in paragraph 19 of</p> <p>7 Footnote 42, where I was actually analyzing</p> <p>8 the city pairs or the markets that Dr. Vasigh</p> <p>9 was looking at, and I think one of the</p> <p>10 markets in particular I think I was looking</p> <p>11 at there was, if I recall -- was it New</p> <p>12 Orleans to Austin? And, you know, he has in</p> <p>13 his, whatever it was, Exhibit D to his, he</p> <p>14 kind of holds up that as being a hidden-city</p> <p>15 opportunity and that that's a reflection of</p> <p>16 some type of market power.</p> <p>17 And I said, wait, like listen, if</p> <p>18 you're traveling from New Orleans to Austin,</p> <p>19 Southwest is flying -- I don't know what is</p> <p>20 it? -- five flights a day or four flights a</p> <p>21 day between -- nonstop between Austin and New</p> <p>22 Orleans; whereas American has to -- for them</p> <p>23 to take you between New Orleans and Austin,</p> <p>24 you have to make a connection at DFW and that</p> <p>25 adds -- you know, I could point you to the</p> <p style="text-align: right;">Page 134</p>	<p>1 lower prices than it otherwise would if it</p> <p>2 served New Orleans to Austin nonstop, because</p> <p>3 it has to not over over -- it has to overcome</p> <p>4 the fact that, you know, you're going to add</p> <p>5 another two hours to this journey, which is</p> <p>6 not a particularly long journey.</p> <p>7 So that is competition. That's</p> <p>8 vigorous competition. And what Dr. Vasigh is</p> <p>9 trying to contort that into is some kind of</p> <p>10 notion that American is exercising some kind</p> <p>11 of market power between Dallas and Austin,</p> <p>12 and how can that be when Southwest offers,</p> <p>13 you know, eight or nine or ten flights a day</p> <p>14 in that market.</p> <p>15 Q. But both those legs right, Dallas</p> <p>16 to New Orleans and Dallas to Austin, have</p> <p>17 multiple flights from both carriers, right?</p> <p>18 A. On the two components of Austin to</p> <p>19 New Orleans, they do, yes.</p> <p>20 Q. Okay. So, I mean, under your</p> <p>21 logic, they're not both competitive, right?</p> <p>22 A. No, but you're -- but you're --</p> <p>23 I'm sorry. Please ask your question. I</p> <p>24 interrupted.</p> <p>25 Q. Under your logic, both legs are</p> <p style="text-align: right;">Page 136</p>
<p>1 parts of my report where it describes the</p> <p>2 added time, making a connection.</p> <p>3 So, yeah, so American sometimes</p> <p>4 prices that very aggressively in order to</p> <p>5 compete with Southwest nonstop service. So</p> <p>6 it's competition that's driving on that O&amp;D,</p> <p>7 that lower fare. It has nothing to do with</p> <p>8 market power.</p> <p>9 Q. If they could lower the Austin to</p> <p>10 Dallas flight as well, right, it's the direct</p> <p>11 flight that's offered from Austin to Dallas,</p> <p>12 that could be lowered, right?</p> <p>13 A. They base -- what is it? Like ten</p> <p>14 flights a day, competition from Southwest on</p> <p>15 that. That is a competitive route. What I'm</p> <p>16 saying is that they're flying head to head</p> <p>17 against Southwest between Dallas and Austin.</p> <p>18 Those two carriers are just battling it out,</p> <p>19 day in and day out, okay, with the premium at</p> <p>20 low-cost carrier, right?</p> <p>21 On Austin to New Orleans, American</p> <p>22 is at a disadvantage, right, because it has</p> <p>23 to connect people over Dallas, and so it</p> <p>24 comes as no surprise to me that sometimes</p> <p>25 American will offer -- have to -- offer even</p> <p style="text-align: right;">Page 135</p>	<p>1 competitive, right?</p> <p>2 A. Those two legs are highly</p> <p>3 competitive, but where the hidden-city</p> <p>4 opportunity exist that he identifies, one of</p> <p>5 them is Austin to New Orleans, and then</p> <p>6 Austin to New Orleans, that is a city pair in</p> <p>7 which American doesn't serve nonstop, okay,</p> <p>8 but Southwest does.</p> <p>9 So now Southwest has this other</p> <p>10 advantage, putting aside its cost advantage,</p> <p>11 it has yet another advantage, which is it</p> <p>12 flies, a document in my report, I don't know,</p> <p>13 it's like three or four daily nonstop</p> <p>14 flights. And American, the only way it can</p> <p>15 take people between New Orleans and Austin is</p> <p>16 by connecting them over DFW. I mean, you can</p> <p>17 connect in other places as well but that</p> <p>18 would be the primary way.</p> <p>19 So to me it is not surprising at</p> <p>20 all, that on occasion, in order to better</p> <p>21 compete against Southwest, which offers this</p> <p>22 nonstop product versus American's connecting</p> <p>23 product, it has to cut -- it has to be even</p> <p>24 more aggressive on pricing to try to woo some</p> <p>25 of these passengers who can fly nonstop.</p> <p style="text-align: right;">Page 137</p>

<p>1 Q. So you're admitting both legs are 2 competitive, but you just believe that the 3 Austin to New Orleans leg -- or flight is 4 hypercompetitive because Southwest offers a 5 direct flight from Austin to New Orleans? 6 A. What I'm saying is that American 7 is competing against -- whereas on the 8 component legs, okay, on an O&amp;D basis, 9 they're going head to head with nonstop 10 service. 11 On these other routes, these 12 connecting routes, which is for American a 13 connecting route but for Southwest a nonstop 14 route, okay, that puts American -- you know, 15 it needs to do something in order to convince 16 people that would otherwise fly Southwest to 17 fly on American, notwithstanding the fact you 18 have to make a connection; it's going to take 19 you a couple hours longer because of that 20 connection or 90 minutes longer. 21 And so, yeah, one the things it 22 does to compete against that is to offer even 23 more aggressive pricing. 24 Q. But that's an argument you're 25 making. You don't have written evidence of</p> <p style="text-align: right;">Page 138</p>	<p>1 Orleans to Austin? I can't remember. 2 A. I mean, it really doesn't matter. 3 Q. If it doesn't matter, New Orleans 4 to Austin, right, you didn't review any 5 actual evidence or data or documents as to 6 why American's pricing that route the way 7 it's pricing it, correct? 8 A. I mean, I think what you need to 9 do is keep in mind that what I'm doing, in 10 this particular analysis and much in my 11 report -- 12 Q. Dr. Lee, I'm sorry -- I'm sorry 13 to interrupt you. But you have got to answer 14 a yes-or-no question, or we are going to have 15 to get the judge to make you do that. 16 So yes or no, did you review any 17 documents, evidence, data, or did you talk to 18 any American personnel as to how they price 19 that particular route? 20 A. I think I've already answered that 21 question, which is that I've spoken to no 22 American individuals, and if I -- what I was 23 saying is that I am responding to an exhibit 24 of Dr. Vasigh, where he holds that out as 25 being a hidden city -- you know, a hub</p> <p style="text-align: right;">Page 140</p>
<p>1 that. In other words, you didn't review 2 materials from American that says this is the 3 way we do our pricing and this is why we even 4 lower our pricing even more on this 5 particular Austin to New Orleans ultimate 6 destination because of the reasons you're 7 articulating, right? 8 A. Well, I know that carriers out 9 there are doing everything they can to 10 compete with lower-cost carriers day in and 11 out, and they price on an O&amp;D basis. 12 Q. But you didn't interview anybody 13 at American? You didn't review any materials 14 that reflected what their pricing strategy 15 was on any of these routes, right, this is 16 just your general knowledge in the industry 17 that you're relying on, correct? 18 A. Well, I did not interview anyone 19 at American. I know from studying and having 20 worked in this industry for 26 years that 21 every day that American and other large 22 network carriers go into the marketplace and 23 are battling it out for every customer. 24 Q. This particular New Orleans to 25 Austin -- is it Austin to New Orleans or New</p> <p style="text-align: right;">Page 139</p>	<p>1 premium, as he calls it, I think, and I'm 2 explaining the reason for what he's observing 3 is being driven by American's attempt to be 4 competitive on a route where they don't offer 5 nonstop service against Southwest, which 6 does. 7 Q. Do you have anything else to add 8 to that answer to my question? 9 A. No, I think I'm satisfied with my 10 answer. 11 Q. Now, if we go to Section C, we 12 were there a minute ago, I think it was on 13 page 34, maybe example 15 -- excuse me -- 14 Exhibit 15. 15 A. Okay. 16 Q. Now, I agree that the copy quality 17 of that chart is not great. 18 But do you remember the particular 19 route this is describing? 20 A. Well, the one part I can't see 21 here and recall is this is from Boston to 22 Dallas. 23 Q. And that's actually -- 24 A. That you can see that, yeah. 25 Q. Now, you didn't run an analysis --</p> <p style="text-align: right;">Page 141</p>

<p>1 you brought this one example up, but you 2 didn't run an analysis to see how often this 3 situation happens where the total net cost to 4 the customer through Skiplagged facilitating 5 a transaction ends up to be higher than what 6 the quote was from American Airlines, right? 7 A. I was not asked to perform that 8 analysis, no. 9 Q. This was just a spot example, 10 correct? 11 A. This is an example of what 12 happened when I did it, yeah. 13 Q. Okay. And were you told to go to 14 that particular route our did you pick that 15 route on your own? 16 A. No, it's a route that I picked it 17 on my own. I mean, I'm -- obviously I live 18 in Boston and Dallas was featured prominently 19 Dr. Vasigh's report so I thought it would be 20 a good route to look at. 21 Q. Okay. And you particularly call 22 out -- now, what was the difference in time 23 between looking at the two situations, the 24 quote through American versus the quote 25 through Skiplagged?</p> <p style="text-align: right;">Page 142</p>	<p>1 the statement in American -- or, excuse me, 2 in Skiplagged's menus that apparently you 3 went through where apparently it said you're 4 saving \$21 compared to other websites, 5 correct? 6 A. Ah, yes, that is correct. 7 Q. And you try to describe that as -- 8 generally as misleading, correct? 9 A. , I felt it was quite misleading. 10 Q. But you're familiar with -- that 11 American does offer its fares through 12 multiple different vendors, right, it's not 13 just the American Airlines website, right? 14 A. That is correct. 15 Q. So it's possible that there was a 16 \$21 savings compared to that flight being 17 offered, let's say, through Expedia or 18 another vendor that American uses, correct? 19 A. Well, it's always possible, but I 20 think what I'm pointing out in this example, 21 which is really why I wanted to ask you which 22 example we were looking at, is that the \$21 23 fare savings that purported to exist was with 24 the first price that Skiplagged offered to me 25 in the process. So then I pulled out my</p> <p style="text-align: right;">Page 144</p>
<p>1 A. Sorry. Are you now referring to 2 paragraph 36 or are you still -- there's two 3 examples, right, there's two examples done on 4 different days. They both use Boston to 5 Dallas, but I just want to make sure we're 6 talking about the same example. 7 Q. Okay. Well, either example -- 8 A. Yeah. 9 Q. -- because I couldn't understand 10 from your report -- 11 A. Yeah. 12 Q. -- how close in proximity and time 13 you were obtaining these quotes. 14 A. I was doing it in real-time on 15 both. 16 Q. Okay. So you got a quote from 17 Skiplagged -- 18 A. Yeah. 19 Q. -- and then immediately went and 20 got that same quote, or on the same leg, I 21 should say -- 22 A. Yeah. 23 Q. -- from the American website? 24 A. Correct. 25 Q. Now, particularly, you call out</p> <p style="text-align: right;">Page 143</p>	<p>1 credit card, I entered all my information. I 2 actually purchased the ticket. 3 And from the time that I was first 4 informed that I had been saving \$21 to the 5 time that I entered in my information, my 6 credit card information and went to purchase 7 it, Skiplagged increased the price twice. 8 Okay. So the price went up twice, and they 9 continued to tell me that I was saving \$21, 10 even though within this, like, couple-minute 11 period the price went up twice. And then 12 after I went and purchased the ticket, with 13 the price having gone up twice, I then went 14 back to American's website, okay, and I could 15 have got the price for lower. 16 Q. Let me make sure I understand the 17 process you went through. 18 When you were navigating the 19 Skiplagged website, it informed you of the 20 increase in price before you actually 21 purchased the ticket? 22 A. Yes, I went to purchase -- I think 23 I just describe it quite clearly in my 24 report. 25 But I initially went to hit</p> <p style="text-align: right;">Page 145</p>

<p>1 purchase. They said, oh -- the price has 2 gone up, and it said the price has gone up 3 by, you know, the first time it said it went 4 up by -- I think it was like up to 177, they 5 said please hit refresh, sorry for the 6 inconvenience, and then at the next step it 7 actually increased it again, and then I 8 purchased the ticket.</p> <p>9 I got an email confirmation like a 10 minute later and that email confirmation 11 continued to tell me that I had saved \$21, 12 even though the \$21 was based off the initial 13 price, which was, like, \$40 less.</p> <p>14 Q. But both -- I want to make sure I 15 understand.</p> <p>16 Both situations you or the 17 consumer had the opportunity not to purchase 18 the price with -- purchase the ticket, I 19 should say, with the knowledge that the fare 20 had actually gone up, right?</p> <p>21 A. Yeah, I was never charged -- it 22 wasn't as though, like, I go get my credit 23 card statement and it was more than I had 24 agreed to pay. I'm not suggesting that they 25 charged my credit card for more than I was</p> <p style="text-align: right;">Page 146</p>	<p>1 fly by offering me this fare at the first 2 surge of whatever it was, 153, or whatever, 3 telling me at that moment in time that's the 4 lowest fare. So I hit yeah. I would go and 5 get that.</p> <p>6 I entered my credit card 7 information. The fare goes up twice. It's 8 still telling me I'm saving \$21, that that 9 \$21 save has never changed on any part of the 10 Skiplagged communication to me. But what 11 Skiplagged wasn't doing, was saying, well, 12 wait, maybe, actually, because that fare had 13 gone up on the hidden city, like, why not 14 check actually Boston to Dallas, which is 15 really where this person is trying to go to, 16 and see whether or not it's offering the 17 savings.</p> <p>18 It didn't do that, and because of 19 that I paid more than I would have had to pay 20 if I just gone ahead and bought the ticket on 21 American or on another website, an 22 unauthorized agent of American, and gotten 23 that ticket, the nonstop flight, could 24 have got my AAdvantage miles, could have 25 brought a carry-on bag, didn't have to</p> <p style="text-align: right;">Page 148</p>
<p>1 told.</p> <p>2 Q. Okay. And that was -- as we 3 talked about with dynamic pricing, that is 4 possible in American's revenue management 5 cycle, the way they ultimately price tickets 6 is fares change day to day and even sometimes 7 minute to minute, correct?</p> <p>8 A. Yeah, but the problem here, as I 9 describe in my report, is because Skiplagged 10 never went back -- it was like looking at 11 this hidden-city opportunity, you know, I had 12 a price at one moment in time, and yeah, 13 maybe that moment in time did exist and maybe 14 hypothetically, in the moment between that 15 initial quote and the time I entered in my 16 credit information, maybe the price on the 17 hidden-city ticket went up. Okay.</p> <p>18 But it never goes back then and 19 compared it to just, oh, what if I bought the 20 nonstop flight, and that is the flight that 21 didn't go up. That stayed the same. So what 22 I really want to do, the Skiplagged 23 passenger -- I'm sorry -- customer, here I'm 24 a Skiplagged customer, I just want to fly 25 from Boston to Dallas. And it entices me to</p> <p style="text-align: right;">Page 147</p>	<p>1 violate American's contract of carriage, so 2 that, to me, I felt like I had been 3 bait-and-switched there.</p> <p>4 Q. That's your own personal reaction? 5 A. I mean, I travel a lot.</p> <p>6 Q. Well, if you travel a lot, you've 7 been on -- you've certainly been on 8 American's website before where you've 9 tried -- do you book your own flights? 10 A. Often I do, yes.</p> <p>11 Q. So you've certainly been on 12 American's website, I would assume, where 13 you've gone to book a flight on a particular 14 class of seat to a particular location and it 15 interrupts somewhere through process and 16 says, well, that fare or that seat is no 17 longer available, right, and it's a new fare?</p> <p>18 A. I mean, quite honestly, I have not 19 personally had that experience on American, 20 and keep in mind, while I was always -- while 21 I was doing these Skiplagged searches, I had 22 a separate American window going on as well. 23 That did not happen to me.</p> <p>24 Q. Ever? 25 A. Well, during these searches it</p> <p style="text-align: right;">Page 149</p>

<p>1 hadn't.</p> <p>2 Q. That wasn't my question, during</p> <p>3 these searches.</p> <p>4 My question was, certainly you've</p> <p>5 been on American's website trying to book a</p> <p>6 flight where somewhere through the process it</p> <p>7 stops you and says that seat at that price is</p> <p>8 no long available, right?</p> <p>9 A. I do not recall having a situation</p> <p>10 where once I got to the point where I was</p> <p>11 entering in credit card information, that the</p> <p>12 fare had changed. I have certainly been</p> <p>13 shopping for airfares where I check on</p> <p>14 Tuesday or I check -- you know, during the</p> <p>15 day, see what the prices look like, figure I</p> <p>16 want to wait until I get home, talk to my</p> <p>17 wife, figure out if those days work, and then</p> <p>18 yeah, the fares have changed. Sometimes</p> <p>19 they're higher. Sometimes they're lower. I</p> <p>20 put it off for a day, whatever, and the fares</p> <p>21 changed. That's happened to me.</p> <p>22 I can't tell you, as I sit here</p> <p>23 right now, that I've had a situation where I</p> <p>24 have got to the point where I am just</p> <p>25 entering in credit card information and the</p> <p style="text-align: right;">Page 150</p>	<p>1 twice.</p> <p>2 Q. And this is just what you</p> <p>3 observed, right?</p> <p>4 I mean you talk a number of times</p> <p>5 in your report about Skiplagged's intent, and</p> <p>6 they intentionally do this or that. You</p> <p>7 don't really have evidence or knowledge of</p> <p>8 what Skiplagged's intent was when it was</p> <p>9 programming its program and creating its</p> <p>10 algorithm, right, you're just talking about</p> <p>11 what you observed in navigating the</p> <p>12 Skiplagged website, correct?</p> <p>13 A. Well, I'm not sure what you mean</p> <p>14 by "intent." I know the intent of</p> <p>15 Skiplagged, as I understand this case and as</p> <p>16 I understand their business, is to offer</p> <p>17 hidden-city ticket opportunities. Okay? So</p> <p>18 that I believe is their intent.</p> <p>19 Do I believe that they foresaw</p> <p>20 what happened to me and, you know,</p> <p>21 intentionally programmed it in, I don't know</p> <p>22 one way or another. I'm just -- I'm</p> <p>23 explaining what happened to me, and I'm</p> <p>24 explaining why the proposition that is</p> <p>25 really, I think, foundational to Dr. Vasigh's</p> <p style="text-align: right;">Page 152</p>
<p>1 fare has changed.</p> <p>2 Q. But you're not disagreeing with</p> <p>3 Skiplagged's practice of alerting the</p> <p>4 customer before it buys the ticket from</p> <p>5 American. I mean, you realize they're buying</p> <p>6 this ticket from American, these are</p> <p>7 American's prices, right?</p> <p>8 A. I agree with you these are</p> <p>9 American's prices, but what I'm telling you,</p> <p>10 and I think what the crux of this -- of the</p> <p>11 problem was in this example, was that it</p> <p>12 is -- once you've chosen that ticket and</p> <p>13 you're going down the path of buying the</p> <p>14 hidden-city ticket, and if the price of that</p> <p>15 hidden-city ticket goes up, because, for</p> <p>16 example, American had raised its price, it</p> <p>17 was the last seat and certain inventory was</p> <p>18 sold and now you're continuing the inventory,</p> <p>19 it would stand to reason that if I really</p> <p>20 just want go from Boston to Dallas, that what</p> <p>21 it should be doing is comparing what the</p> <p>22 actual prices are on Boston to Dallas at that</p> <p>23 time, if it's going to represent to me that I</p> <p>24 am saving \$21, because I was by no means</p> <p>25 saving \$21, given that the fare had gone up</p> <p style="text-align: right;">Page 151</p>	<p>1 opinions that Skiplagged is affording people</p> <p>2 these lower fares, is not necessarily true</p> <p>3 because, in my own experience, it was telling</p> <p>4 me it was a lower fare, when, in fact, it</p> <p>5 wasn't.</p> <p>6 Q. Starting on page 37, going with</p> <p>7 Exhibit 17, and I think going on into</p> <p>8 paragraph 38, which continues on to page 38,</p> <p>9 you're talking about examples or attributes</p> <p>10 to the American product that are being -- I</p> <p>11 believe you used the word "degrading."</p> <p>12 You remember that part of your</p> <p>13 report?</p> <p>14 A. I do, yes.</p> <p>15 Q. Okay. I just want to make sure I</p> <p>16 understand. That's your personal opinion,</p> <p>17 you didn't actually do any analysis? Like</p> <p>18 you're not here to offer any type of damage</p> <p>19 testimony or put any type of valuation on</p> <p>20 what this alleged degrading ultimately</p> <p>21 resulted in, correct?</p> <p>22 A. I have not been asked to render</p> <p>23 any opinions on damages.</p> <p>24 Q. So this is just an observation</p> <p>25 you're making. It is not part of an analysis</p> <p style="text-align: right;">Page 153</p>



<p>1 to try and quantify or put an order of 2 magnitude on this alleged degrading, correct? 3 A. I have not been asked to quantify 4 the degree of degrading. What I'm pointing 5 out here is that as a nonauthorized -- as a 6 nonagent of American, they're not an 7 authorized agent, they are intentionally 8 degrading the product. 9 Q. Intentionally. You have knowledge 10 of their intent? 11 A. Well, they say it. I mean, I 12 don't know what's in the minds of whoever 13 wrote the code, but what I'm telling you is 14 that throughout the process, Skiplagged told 15 me only -- backpack only. Do not attempt to 16 bring a piece of carry-on luggage after I 17 bought the ticket. Skiplagged sent me an 18 email telling me, do not associate my 19 frequent flyer miles. So that is their 20 intent, is to degrade the product. 21 Q. What other evidence, other than 22 what you just described, do you have that 23 Skiplagged intentionally attempted to degrade 24 American's products? 25 A. I mean, that I think is -- they</p> <p style="text-align: right;">Page 154</p>	<p>1 potential customer, you would have seen those 2 warnings and had the options to decide where 3 you take the carry-on bag or not, whether you 4 insert your frequent flyer mileage or not, 5 right, the consumer has the option, after 6 getting that information from Skiplagged, to 7 make that decision, correct? 8 A. Yeah, I certainly have the option, 9 but it comes with risks and Skiplagged 10 informs me of those risks. So yes, if I 11 decide I want to enter my frequent flyer 12 number and if I'm willing to bear the risk of 13 having my bank of AAdvantage miles taken away 14 or my status revoked, sure, but that to me is 15 a degradation of the product. 16 Q. Are you aware that American has 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 A. Not -- I don't have specific 23 knowledge. I understand just from being 24 around the industry that that can happen. 25 Q. Are you aware that they have</p> <p style="text-align: right;">Page 156</p>
<p>1 are -- they told me, that's what they told 2 me. 3 Q. I know you said that. But I asked 4 what other evidence do you have of 5 Skiplagged's intent to intentionally degrade 6 American's product? 7 A. I don't think I need any more than 8 that. I mean, they are instructing me to 9 forgo AAdvantage miles. They're instructing 10 me to not take a carry-on bag if I want to. 11 That is a degradation of the product that 12 American offers. It's an important part of 13 American's -- of value proposition to 14 consumers, is the fact that they offer 15 AAdvantage miles; the fact that their basic 16 economy tickets allow passengers to bring a 17 carry-on bag, whereas Spirit and Allegiant 18 and Frontier don't, without a fee. That's an 19 integral part of the value proposition that 20 American offers into the marketplace, and 21 Skiplagged is saying I can't do that or I 22 shouldn't do that or warning me against doing 23 it. 24 Q. But, Of course, in this example 25 where you were, at least theoretically, the</p> <p style="text-align: right;">Page 155</p>	<p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 A. Again, as part of this analysis, I 5 haven't had any specific conversations with 6 people at American. But I've been working in 7 this industry for a long time, and I 8 understand that that's one of the things that 9 has been done. 10 Q. And you would at least agree that 11 it's possible that in this hidden-city 12 ticketing application, that American could 13 gain more revenue than if there wasn't a 14 hidden-city ticket application, correct? 15 A. I'm not sure what you mean by that 16 question. Could you -- 17 Q. Well, there's at least a scenario 18 where somebody gets off on a hidden city and 19 American is able then to sell that second leg 20 for more than the difference between a direct 21 flight and a hidden-city ticket, right? 22 A. Again, can you -- I'm having a 23 little trouble because of the temporal aspect 24 of what you're suggesting. So could you 25 maybe ask the question again. I just want to</p> <p style="text-align: right;">Page 157</p>

<p>1    mare sure I understand.</p> <p>2       Q.   So there's a possibility that</p> <p>3    consumer A buys a hidden-city ticket from</p> <p>4    Boston to San Antonio, going through Dallas</p> <p>5    Fort Worth, and there's a price for a Boston</p> <p>6    to Dallas direct flight that's slightly</p> <p>7    higher, let's say hypothetically. Okay?</p> <p>8       A.   Okay.</p> <p>9       Q.   The consumer purchases Boston to</p> <p>10   San Antonio through Dallas, flies to Dallas</p> <p>11   and gets off the flight.</p> <p>12      A.   Yeah.</p> <p>13      Q.   American then hypothetically is</p> <p>14   able to maybe put a passenger on the Dallas</p> <p>15   to San Antonio flight that could give them</p> <p>16   more value than what was the difference in</p> <p>17   ticketing between the direct flight from</p> <p>18   Boston to Dallas and the hidden city fare,</p> <p>19   correct?</p> <p>20      A.   So are you thinking about a</p> <p>21   scenario -- I just want to make sure I</p> <p>22   understand where in the period of time</p> <p>23   between which that person lands in Dallas and</p> <p>24   walks out the terminal but before it's known</p> <p>25   to American that he's a no-show, because he</p> <p style="text-align: right;">Page 158</p>	<p>1    the counter, and so I don't understand that.</p> <p>2       Like, you can't have a bag that --</p> <p>3    I -- I -- I don't understand your scenario.</p> <p>4    I mean, like that -- that -- that -- the fact</p> <p>5    of the matter is that American doesn't know</p> <p>6    that the person is no-showing for that flight</p> <p>7    until it's kind of too late to actually sell</p> <p>8    that ticket to someone.</p> <p>9       Q.   Do you know that for sure? Are</p> <p>10   you aware of situations where American has</p> <p>11   [REDACTED]</p> <p>12   [REDACTED]</p> <p>13   [REDACTED]</p> <p>14   [REDACTED]</p> <p>15   [REDACTED]</p> <p>16   [REDACTED]</p> <p>17   [REDACTED]</p> <p>18   [REDACTED]</p> <p>19   [REDACTED]</p> <p>20      A.   [REDACTED]</p> <p>21      Q.   [REDACTED]</p> <p>22      A.   Yeah.</p> <p>23      Q.   Are you aware that that's</p> <p>24   happened, that scenario has happened, [REDACTED]</p> <p>25   [REDACTED]</p> <p style="text-align: right;">Page 160</p>
<p>1    doesn't notify, I mean they're holding up</p> <p>2    that seat, they're holding that seat, that</p> <p>3    someone magically shows up at the airport</p> <p>4    when the gate is closing, and they realize</p> <p>5    that this person is no longer there and they</p> <p>6    sell that seat. Is that what you're --</p> <p>7       Q.   That's a possibility or possibly</p> <p>8    even somebody is sitting on standby, and</p> <p>9    let's say the difference in fare was only 20</p> <p>10   bucks. Okay?</p> <p>11      A.   Standby --</p> <p>12      Q.   Hang on. Let me finish my</p> <p>13   example.</p> <p>14      So the difference in fare is only</p> <p>15   20 bucks, and the person on standby then gets</p> <p>16   to go on the flight from Dallas to San</p> <p>17   Antonio but he checks a bag and it costs him</p> <p>18   \$25. There's a scenario where American could</p> <p>19   gain more revenue by allowing the hidden-city</p> <p>20   ticket to happen and then putting another</p> <p>21   passenger on that second leg. That scenario</p> <p>22   at least exists, right?</p> <p>23      A.   I don't understand the scenario,</p> <p>24   because that person that's sitting there is</p> <p>25   at the gate and the bag, you check the bag at</p> <p style="text-align: right;">Page 159</p>	<p>1       A.   I'm not aware one way or another</p> <p>2   that that's happened, but I'll take that as a</p> <p>3   hypothetical.</p> <p>4       But now you're -- I think I'm</p> <p>5   trying to explain the situation as I</p> <p>6   understand it, where a person buys a ticket,</p> <p>7   a Skiplagged ticket for a hidden city, is</p> <p>8   [REDACTED];</p> <p>9   so now I've got, like, a no-show on Boston to</p> <p>10   Dallas, I've got a no-show on Dallas to San</p> <p>11   Antonio, had I known that -- it's a confusing</p> <p>12   example.</p> <p>13      And you're saying that later that</p> <p>14   day they zero out that itinerary and all of a</p> <p>15   sudden there's a new seat in inventory and</p> <p>16   that someone then walks up to the airport in</p> <p>17   Dallas, wanting to buy a seat at the ticket</p> <p>18   counter later in the day, and now there's a</p> <p>19   seat for them.</p> <p>20      Is that what you're suggesting?</p> <p>21      Q.   Well, there are a number of</p> <p>22   scenarios there, right? I mean, we don't</p> <p>23   know [REDACTED]</p> <p>24   [REDACTED]</p> <p>25   [REDACTED]</p> <p style="text-align: right;">Page 161</p>

<p>1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 7 A. Well, I just don't understand what 8 your counterfactual is. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] So, I mean, sure, you can conjure up 13 any example you want, but that doesn't alter 14 the fact that these are tickets that, you 15 know, are not compliant with the contract of 16 carriage, and that in the kind of the but-for 17 world where it didn't exist, American would 18 have that inventory to sell to someone else 19 as well as. 20 Q. But, again, you're saying didn't 21 comply with the contract to carriage just as 22 a lay observation. You're not a lawyer that 23 did any legal analysis on that, correct? 24 A. Well, I -- again, I've read the 25 contract of carriage. It specifically</p> <p style="text-align: right;">Page 162</p>	<p>1 would be the Dallas-San Antonio segment. 2 Q. So the sentence reads, [REDACTED] [REDACTED] [REDACTED] [REDACTED] 6 What evidence do you have that on 7 American flights, when there are hidden-city 8 tickets, that [REDACTED] [REDACTED] 10 A. Well, based off my knowledge of 11 the industry and of American and of their 12 load factors, most flights go up with at 13 least some empty seats. 14 Q. Have you reviewed any data on 15 instances where a hidden-city ticket method 16 is employed and that [REDACTED] [REDACTED] 18 A. I haven't performed any specific 19 analysis because I wouldn't -- I didn't have 20 access to -- like if I had Skiplagged data 21 for something like that, I could try and do 22 that analysis. I don't have Skiplagged -- 23 all the Skiplagged tickets where people had 24 purchased hidden-city tickets. 25 I'm making just a general</p> <p style="text-align: right;">Page 164</p>
<p>1 prohibits the use of hidden-city tickets. 2 So I'm not making a legal 3 conclusion, but I'm just saying that I've 4 seen seeing the contract of carriage and I've 5 seen that it explicitly prohibits these 6 hidden-city tickets. 7 MR. TOBIN: Let's take a 8 five-minute break. 9 THE VIDEOGRAPHER: The time is 10 1:22. We're going off the record. 11 (Recess taken at 1:22 p.m. to 1:33 p.m.) 12 THE VIDEOGRAPHER: We're back on 13 the record. The time is 1:33. 14 BY MR. TOBIN: 15 Q. Dr. Lee, if you'll turn to page 43 16 of your report, and in particular I'd like 17 you to look at paragraph 42, the first 18 sentence, please. 19 A. Yes, I see that. 20 Q. Just so the record is clear, I 21 think I know what you mean, but just so the 22 record is clear. What do you mean by 23 "beyond-hub segment"? 24 A. Well, it would be in the example 25 that we've been talking about frequently. It</p> <p style="text-align: right;">Page 163</p>	<p>1 observation that, based off my knowledge and 2 experience of the airline industry generally 3 and American in particular, that the 4 majority -- beyond the majority of flights 5 have at least one empty seat when they 6 depart. 7 MR. TOBIN: At times, I believe 8 that Dr. Lee has been unnecessarily 9 evasive in this deposition. So I'm 10 going to reserve my right to recall him 11 or compel him to be here and answer my 12 questions, but subject to that, I pass 13 the witness at this time. 14 MR. MUYSKENS: I'm going to 15 respectfully disagree, but we're done. 16 Thank you very much. 17 THE VIDEOGRAPHER: The time is 18 1:36. We're going off the record. This 19 is the end of today's deposition of 20 Darin Lee, Ph.D. 21 THE STENOGRAPHER: Mr. Tobin, 22 you're ordering the original? 23 MR. TOBIN: Yes. 24 THE STENOGRAPHER: Mr. Muyskens, 25 are you ordering a copy?</p> <p style="text-align: right;">Page 165</p>



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<p>1 MR. MUYSKENS: Expedited, please.</p> <p>2 THE STENOGRAPHER: When for?</p> <p>3 MR. MUYSKENS: As soon as you can.</p> <p>4 THE STENOGRAPHER: Did you want</p> <p>5 expedited also?</p> <p>6 MR. TOBIN: Yeah, if they're going</p> <p>7 to get it, I guess we'll go ahead.</p> <p>8 (Deposition suspended at 1:37 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 SIGNATURE PAGE</p> <p>2 AMERICAN AIRLINES, INC. VERSUS SKIPLAGGED,</p> <p>3 INC. LTD.</p> <p>4</p> <p>5 I, the undersigned, declare under penalty</p> <p>6 of perjury that I have read the foregoing</p> <p>7 transcript, and I have made any corrections,</p> <p>8 additions or deletions that I was desirous of</p> <p>9 making; that the foregoing is a true and</p> <p>10 correct transcript of my testimony contained</p> <p>11 therein.</p> <p>12</p> <p>13 Executed this _____ day of</p> <p>14 _____,</p> <p>15</p> <p>16 at _____,</p> <p>17 (CITY) (STATE)</p> <p>18</p> <p>19 _____</p> <p>20 DARIN N. LEE, PH.D.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 166	Page 168
<p>1 COMMONWEALTH OF MASSACHUSETTS</p> <p>2 SUFFOLK SS.</p> <p>3</p> <p>4 I, Sandra A. Deschaine, Registered</p> <p>5 Professional Reporter and Notary Public</p> <p>6 within and for the Commonwealth of</p> <p>7 Massachusetts at large, do hereby certify</p> <p>8 that the deposition of Darin N. Lee, Ph.D., in</p> <p>9 the matter of American Airlines, Inc. versus</p> <p>10 Skiplagged, Inc., at the offices Greenberg</p> <p>11 Traurig, One International Place, Boston,</p> <p>12 Massachusetts, on July 11, 2024, taken and</p> <p>13 transcribed by me; that the witness provided</p> <p>14 satisfactory evidence of identification as</p> <p>15 prescribed by Executive Order 455 (03-13)</p> <p>16 issued by the Governor of the Commonwealth of</p> <p>17 Massachusetts; that the transcript produced</p> <p>18 by me is a true record of the proceedings to</p> <p>19 the best of my ability; that the witness is</p> <p>20 reading and signing; that I am neither</p> <p>21 counsel for, related to, nor employed by any</p> <p>22 of the parties to the action in which this</p> <p>23 deposition was taken, and further that I am</p> <p>24 not a relative or employee of any attorney or</p> <p>25 counsel employed by the parties thereto, nor</p> <p>financially or otherwise interested in the</p> <p>outcome of the action, on this 15th of July</p> <p>2024.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 My Commission Expires:</p> <p>25 July 5, 2024</p>	<p>1 ERRATA SHEET</p> <p>2 AMERICAN AIRLINES, INC. VERSUS SKIPLAGGED,</p> <p>3 INC. LTD.,</p> <p>4 DARIN N. LEE, PH.D. - JULY 11, 2024</p> <p>5</p> <p>6 Page  Line  Change/Correction</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>
Page 167	Page 169

CONFIDENTIAL

1 nathan.muyskens@gtlaw.com

2 July 15, 2024

3 RE: American Airlines, Inc. v. Skiplagged, Inc.

4 DEPOSITION OF: Darin N. Lee , PhD (# 6782850)

5 The above-referenced witness transcript is

6 available for read and sign.

7 Within the applicable timeframe, the witness

8 should read the testimony to verify its accuracy. If

9 there are any changes, the witness should note those

10 on the attached Errata Sheet.

11 The witness should sign and notarize the

12 attached Errata pages and return to Veritext at

13 errata-tx@veritext.com.

14 According to applicable rules or agreements, if

15 the witness fails to do so within the time allotted,

16 a certified copy of the transcript may be used as if

17 signed.

18 Yours,

19 Veritext Legal Solutions

20

21

22

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24

25

Page 170

44 (Page 170)

Veritext Legal Solutions

800-336-4000

App'x 136



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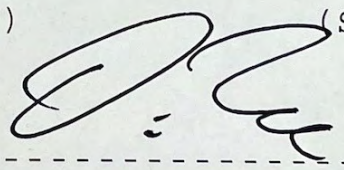
SIGNATURE PAGE

AMERICAN AIRLINES, INC. VERSUS SKIPLAGGED,  
INC. LTD.

I, the undersigned, declare under penalty  
of perjury that I have read the foregoing  
transcript, and I have made any corrections,  
additions or deletions that I was desirous of  
making; that the foregoing is a true and  
correct transcript of my testimony contained  
therein.

Executed this 14<sup>th</sup> day of  
August 2024,

at Boston, MA.  
(CITY) (STATE)

  
DARIN N. LEE, PH.D.



Sarah P. Pontbriand  
NOTARY PUBLIC  
Commonwealth of  
Massachusetts  
My Commission Expires  
5/11/2029

Page 168



## ERRATA SHEET

AMERICAN AIRLINES, INC. VERSUS SKIPLAGGED,  
INC. LTD.,

DARIN N. LEE, PH.D. - JULY 11, 2024

Page	Line	Change/Correction
9	11	"first date of appointment" to "first data point"
10	11-12	"that I might assume" to "that it assumes"
12	6	"lower cost and network" to "lower cost network"
13	9	"is needed" to "isn't needed"
19	21	"in my direct" to "under my direct"
19	22	"in my report" to "on my report"
20	22	"Well, see," to "Well, let's see"
22	1	"earlier May" to "early May"
22	19	"off my heart" to "off by heart"
32	17	"--" to "of"
36	6	"per" to "per se"
38	10	"-- I had a" to "IATA"
40	11	"was DOT, with" to "was a DOT route"
44	22	"in millions" with "in the millions"
47	16	"him" to "them"
53	12	"liability" with "reliability"
57	2	"has the name" with "as the name"
57	17	"because of" with "because"



## ERRATA SHEET

AMERICAN AIRLINES, INC. VERSUS SKIPLAGGED,  
INC. LTD.,

DARIN N. LEE, PH.D. - JULY 11, 2024

Page	Line	Change/Correction
61	2	"in one of" to "it's one of"
65	3	"Southwest" to "itself"
65	4	"There're" to "They're"
71	3	"carrier might" to "carrier, it might"
71	23	"100 database" to "T-100 database"
79	25	"DC airport" to "DCA airport"
83	19	"domestic-only" with "domestic O&D"
83	20	"says decline" to "has declined"
94	6	"the night" to "the flight"
97	15	"then seat" with "then the seat"
100	25	"mistaking" to "mistaken"
109	4	"domestic-only" with "domestic O&D"
110	12-13	"both JFK, New York" to "both JFK, Newark,"
112	21	"competition airfares" to "competition and airfares"
116	18	"domestic-only" with "domestic O&D"
123	25	"domestic-only passenger" with "domestic O&D passengers"
125	23	"or" with "nor"
126	8	"or" with "nor"



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# **Exhibit A-5**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**AMERICAN AIRLINES, INC.,**

*Plaintiff,*

**v.**

**SKIPLAGGED, INC.,**

*Defendant.*

§  
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§

**Civil Action No. 4:23-cv-00860-P**

**DEFENDANT SKIPLAGGED, INC.'S THIRD AMENDED OBJECTIONS AND  
RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Judge Ray's December 19, 2023 Order [Dkt. 53], and the parties' Confidentiality Agreement, Defendant Skiplagged, Inc. ("Skiplagged") hereby serves this, its Third Amended Objections and Responses to Plaintiff American Airlines, Inc.'s First Set of Interrogatories.

Dated: January 12, 2024

Respectfully submitted,

/s/William L. Kirkman  
William L. Kirkman  
State Bar No. 11518700  
[billk@kirkmanlawfirm.com](mailto:billk@kirkmanlawfirm.com)  
Preston B. Sawyer  
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**KIRKMAN LAW FIRM, PLLC**  
201 Main Street, Suite 1160  
Fort Worth, Texas 76102  
Telephone: (817) 336-2800  
Facsimile: (817) 877-1863

Pursuant to the parties' Confidentiality Agreement, Skiplagged's Responses to Interrogatory Nos. 1-7, and 14 are designated CONFIDENTIAL.

/s/ Abigail R.S. Campbell

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**ATTORNEYS FOR DEFENDANT**

**SKIPLAGGED, INC.**

**CERTIFICATE OF SERVICE**

It is hereby certified that on January 12, 2024, a copy of the foregoing was served via e-mail as to all parties who have entered an appearance in this proceeding.

/s/ Abigail R.S. Campbell

Abigail R.S. Campbell

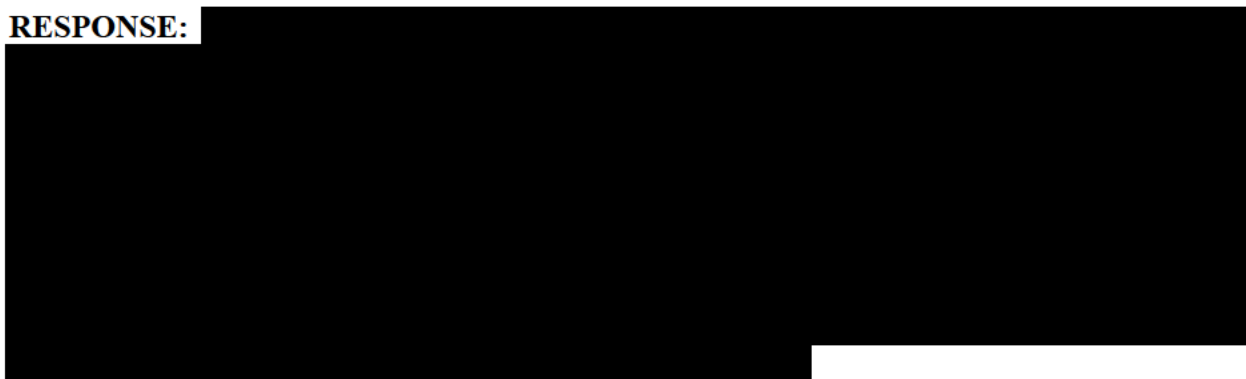
Pursuant to the parties' Confidentiality Agreement, Skiplagged's Responses to Interrogatory Nos. 1-7, and 14 are designated CONFIDENTIAL.

**THIRD AMENDED OBJECTIONS AND RESPONSES  
TO FIRST SET OF INTERROGATORIES**

To comply with Judge Ray's December 19, 2023 Order, Skiplagged makes the following amended objections and responses to Plaintiff's First Set of Interrogatories but does not waive its previously asserted objections.

**INTERROGATORY NO. 1:** Identify Skiplagged's annual, monthly, and quarterly number of American Bookings, and the resulting revenue generated from such bookings, from January 1, 2020 to the present.

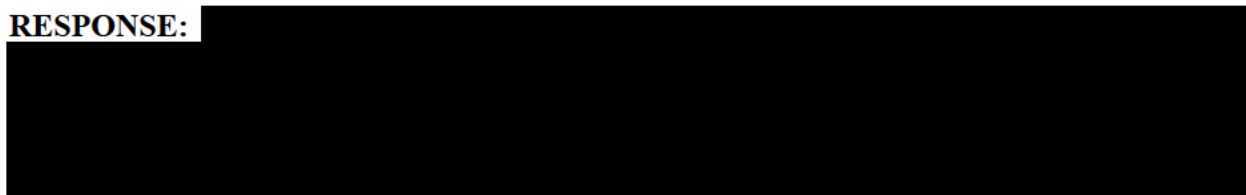
**RESPONSE:**



[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

**INTERROGATORY NO. 2:** Identify and describe in detail each way that Skiplagged has accessed, obtained, collected, received, scraped, cached or harvested American's Content, including but not limited to when and how Skiplagged collected or otherwise obtained the content/information, and including information obtained by Skiplagged from any third party or other source other than American or AA.com.

**RESPONSE:**



Pursuant to the parties' Confidentiality Agreement, Skiplagged's Responses to Interrogatory Nos. 1-7, and 14 are designated CONFIDENTIAL.

[REDACTED]

**INTERROGATORY NO. 3:** Identify and describe all types of data, information, and content relating to American flights, fares, products, or services that Skiplagged has collected or used (whether from or through AA.com, an API of AA.com, or some other source), and the process used by Skiplagged to obtain and use such data, information, or content.

**RESPONSE:**

[REDACTED]

**INTERROGATORY NO. 4:** Identify and describe in detail each way that Skiplagged has purchased, booked, ticketed, sold, resold, brokered, facilitated, acted as a conduit, or made a reservation for customers on American flights, whether purchased or booked on AA.com, through another third party, or by some other means. Your ANSWER should include, without limitation, the names/identities of each and every third party whose data, services, or platform Skiplagged has used or relied on to facilitate the sale of American flights.

**RESPONSE:**

[REDACTED]

[REDACTED]

Pursuant to the parties' Confidentiality Agreement, Skiplagged's Responses to Interrogatory Nos. 1-7, and 14 are designated CONFIDENTIAL.

[REDACTED]

**INTERROGATORY NO. 5:** Describe in detail, from the time a user submits her information and payment on Skiplagged.com to the time Skiplagged completes the booking on AA.com on behalf of the passenger, the process by which Skiplagged purchases and completes a customer's reservation on AA.com, including but not limited to each step of the process, how the passenger's personal, contact, and payment information is submitted on AA.com (i.e., manually or by an automated technological means), and the specific location (both physical and IP address) of the computers or servers from which Skiplagged inputs the passenger's information on AA.com.

**RESPONSE:**

[REDACTED]

**INTERROGATORY NO. 6:** Identify and describe all agreements and/or business relationships that Skiplagged has with other Travel Agencies, travel metasearch engines, airfare consolidators, global distribution systems, or any other third party that provides, enables, facilitates, or otherwise participates in the distribution, display, marketing, brokering, booking, ticketing or sale of flights. Your answer should include the nature of the relationship, any agreements relating to such relationships, and the details, dates, and amounts of any payments or monetary compensation that Skiplagged has paid to or received from such third parties.

**RESPONSE:**

[REDACTED]

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[REDACTED]

[REDACTED]

**INTERROGATORY NO. 7:** Identify all other websites to which Skiplagged.com has provided customers a link or otherwise re-directed customers to complete a booking or purchase of American flights.

**RESPONSE:**

[REDACTED]

[REDACTED]

**INTERROGATORY NO. 8:** Identify all instances in which a person has booked, ticketed or purchased a ticket on an American-marketed flight through or facilitated by Skiplagged.com, including by providing, without limitation, the purchasers' name/identity, location, all PNR Data, any other personal identifying information, flight/itinerary information, reservation numbers, amounts paid by the customer, dates of purchase, and dates of travel.

**RESPONSE:** In response to this interrogatory and pursuant to Judge Ray's Order, Skiplagged states that while it has information regarding the number of bookings facilitated through its "Book Now" feature, the number of bookings facilitated by redirecting users to online travel agencies is unknown. Thus, the number of instances in which Skiplagged facilitated the booking of an American flight from August 1, 2018, to August 17, 2023 and according to Google Analytics is 1,376,927. Because of the magnitude of the information requested, pursuant to Fed. R. Civ. P. 33(d), Skiplagged refers Plaintiff to documents being produced by Skiplagged that reflect responsive information.

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**INTERROGATORY NO. 9:** Identify all IP addresses, names, email addresses, accounts, computers, and any other identifying information that Skiplagged, or anyone acting under Skiplagged's instruction or direction, has used in connection with booking, ticketing, purchasing and/or selling of tickets on American-marketed flights.

**RESPONSE:** In response to this interrogatory, Skiplagged states that it does not book, ticket, purchase, or sell tickets for American-marketed flights. Skiplagged is unable to identify the requested IP addresses, as Skiplagged uses Google Cloud to host Skiplagged.com, which uses dynamic addresses.

**INTERROGATORY NO. 10:** Identify each and every instance where an American-Skiplagged Customer requested a refund, partial or full, for a ticket on an American-marketed flight or where Skiplagged received a refund from American for a flight booked for an American-Skiplagged Customer, and for each instance, identify the reservation number, date of the request, date of the refund, the amount refunded by American, if any, and whether Skiplagged issued a refund back to the customer (and if so, how much of the amount refunded by American was paid back to the customer).

**RESPONSE:** In response to this interrogatory, Skiplagged states that it does not provide or receive refunds from American for any flights because Skiplagged does not charge users for flight tickets nor does Skiplagged purchase flight tickets. Users pay American for their flight tickets. In response to Skiplagged users who request flight refunds, Skiplagged informs them that that refunds must be requested from and issued by American. In certain instances, Skiplagged has refunded service fees. Pursuant to Fed. R. Civ. P. 33(d), Skiplagged refers Plaintiff to documents being produced that reflect customer requests for refunds of American flights.

**INTERROGATORY NO. 11:** From the time Skiplagged began its operations, identify and describe any/all other lawsuits, claims, charges, allegations, arbitration, threatened litigation, administrative complaints, or other proceedings against Skiplagged, whether in the United States or any other country, relating to Skiplagged's marketing or sale of flights or other travel services, including the status of any such proceedings.

**RESPONSE:** In response to this interrogatory, Skiplagged identifies the following lawsuits filed against it, the allegations of which are publicly available:

1. United Airlines, Inc., Orbitz Worldwide, LLC, and Orbitz, LLC v. Zaman, Case No. 1:14-cv-09214 (N.D. Ill.); and
2. Southwest Airlines, Inc. v. Skiplagged, Inc., Skybooker.com LTD, Case No. 3:21-cv-01722-E (N.D. Tex.).

Both cases have been resolved and are terminated. The following "claims, charges, and allegations" have also been made:

1. A demand letter from counsel for Delta Air Lines, Inc. dated July 19, 2018, to which Skiplagged responded through counsel on July 26, 2018; and

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2. A demand letter from Fareportal on behalf of Cheapoair dated February 11, 2015, which was resolved on February 27, 2015.

**INTERROGATORY NO. 12:** Identify the number of bookings Skiplagged has made for or on behalf of consumers with a Texas address through Skiplagged.com's "Book Now" feature, as described in paragraph 12 of Zaman's Declaration.

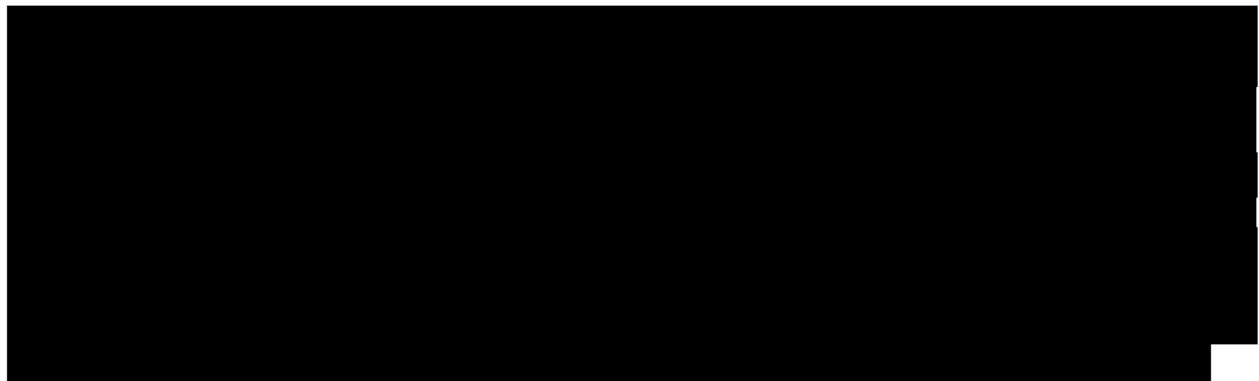
**RESPONSE:** In response to this interrogatory, Skiplagged states that it does not direct, target, or keep separate in its records, persons with a Texas address. The reference made by Mr. Zaman in his Declaration is to Skiplagged's general operations, which are used by all persons everywhere and not just Texans. Skiplagged provides information to persons who come to its website to find information about airfares, air travel, and online travel offerings so they may book fares or tickets through other travel resources and Skiplagged does not "book" tickets or airfares, but rather facilitates persons booking flights. With this understanding, from August 1, 2018, through August 17, 2023, and according to Google Analytics, 59,426,399 persons accessed Skiplagged's site through 209,618,689 sessions, which resulted in 434,534 bookings reflecting Texas addresses through Skiplagged's "Book Now" feature. Accordingly, bookings with Texas addresses made through Skiplagged's Book Now feature represents approximately 00.207 percent of all sessions on Skiplagged.com during the identified period.

**INTERROGATORY NO. 13:** Identify the number of bookings Skiplagged has made for or on behalf of consumers for flights to, from, or within Texas through Skiplagged.com's "Book Now" feature, as described in paragraph 12 of Zaman's Declaration.

**RESPONSE:** In response to this interrogatory, Skiplagged states that it does not direct, target, or keep separate in its records, persons with a Texas address. The reference made by Mr. Zaman in his Declaration is to Skiplagged's general operations, which are used by all persons everywhere and not just Texans. Skiplagged provides information to persons who come to its website to find information about airfares, air travel, and online travel offerings so they may book fares or tickets through other travel resources and Skiplagged does not "book" tickets or airfares, but rather facilitates persons booking flights. With this understanding, from August 1, 2018, through August 17, 2023, and according to Google Analytics, 59,426,399 persons accessed Skiplagged's site through 209,618,689 sessions, which resulted in 854,317 bookings for flights that originated and/or terminated in Texas through Skiplagged's "Book Now" feature. Accordingly, such bookings made through Skiplagged's Book Now feature represent approximately 00.408 percent of all sessions on Skiplagged.com during the identified period.

**INTERROGATORY NO. 14:** Identify all "online travel agencies, global distribution systems, and other travel metasearch engines" and any of the other "variety of sources" from whom "Skiplagged obtains American flight and fare information" (as described in paragraphs 10 and 11 of Zaman's Declaration) and describe the technical means and process by which Skiplagged obtains such information.

**RESPONSE:** [REDACTED]



**INTERROGATORY NO. 15:** Identify the total number of bookings for which Skiplagged has received commission payments or other financial compensation from other Travel Agencies, and the total amount of such payments, for purchases made by consumers with a Texas address that Skiplagged.com redirected to such other Travel Agency.

**RESPONSE:** In response to this interrogatory, Skiplagged states it does not direct, target, or keep separate in its records, persons with a Texas address. Skiplagged is not a Travel Agency, so use of the term “other Travel Agencies” is incorrect. With that understanding, from August 1, 2018, through August 17, 2023, Skiplagged is unaware of the total number of bookings through Travel Agencies made by persons referred by Skiplagged. Skiplagged commissions on redirected bookings to Travel Agencies are paid on two models (1) cost per click or “CPC” (*i.e.*, intent to book), the standard advertising revenue model, or (2) cost per action or “CPA” (*i.e.*, successful booking). However, Skiplagged does not collect the requested information with respect to Texas addresses or anywhere else.

**INTERROGATORY NO. 16:** Identify the total number of bookings for which Skiplagged has received commission payments or other financial compensation from other Travel Agencies, and the total amount of such payments, for purchases of flights to, from, or within Texas made by users that Skiplagged.com redirected to such other Travel Agency.

**RESPONSE:** In response to this interrogatory, Skiplagged states it does not direct, target, or keep separate in its records, persons with a Texas address. Skiplagged is not a Travel Agency, so use of the term “other Travel Agencies” is incorrect. With that understanding, from August 1, 2018, through August 17, 2023, Skiplagged is unaware of the total number of bookings through Travel Agencies made by persons referred by Skiplagged. Skiplagged commissions on redirected bookings to Travel Agencies are paid on two models (1) cost per click or “CPC” (*i.e.*, intent to book), the standard advertising revenue model, or (2) cost per action or “CPA” (*i.e.*, successful booking). However, Skiplagged does not collect the requested information with respect to routing for bookings made by Travel Agencies.

**INTERROGATORY NO. 17:** Identify the number of persons who have signed up for the Skiplagged.com “newsletter” or email subscriber service by entering a “home airport” located in Texas, as prompted on <https://skiplagged.com/signup>.

**RESPONSE:** In response to this interrogatory, Skiplagged states that it does not direct, target or keeps separate in its records, persons with a Texas address or a “home airport” located in Texas as such. Despite that, zero persons “signed up” for such newsletter or e-mail subscriber service from August 1, 2018, to August 17, 2023, by entering a “home airport” located in Texas. This is because Skiplagged launched the newsletter sign-up page on August 28, 2023, which was after American Airlines filed the Complaint in this action.

**INTERROGATORY NO. 18:** Identify the number of times Skiplagged.com has redirected a user to another Travel Agency to complete a booking for a flight to, from, or within Texas.

**RESPONSE:** In response to this interrogatory, Skiplagged states that it does not direct, target, or keeps separate in its records, persons who fly to, from, or within Texas. Skiplagged is not a Travel Agency, so the use of the term “another Travel Agency” is incorrect. With that understanding, Skiplagged has redirected persons 966,655 times to a Travel Agency (not “another” Travel Agency, as Skiplagged is not a “Travel Agency”) to potentially “complete” a booking for a flight to from or within Texas from August 1, 2018, to August 17, 2023, understanding that Skiplagged interprets this Interrogatory to ask for the number of times that Skiplagged.com has redirected persons to an online Travel Agency to complete a booking for a flight involving Texas. Skiplagged does not have information as to how many such referrals resulted in the purchase of airline tickets for flights involving Texas. Each identified booking involves two cities, not necessarily in the same state or country, and “involving Texas” refers to bookings where the trip starts and/or ends in Texas.

**INTERROGATORY NO. 19:** Describe in detail how and from what sources Skiplagged “obtained ... the alleged ‘American Marks’ from [sources other than] American’s website” as alleged in paragraph 10 of Zaman’s Declaration and at page 13 of Skiplagged’s Motion to Dismiss.

**RESPONSE:** In response to this interrogatory, Skiplagged states that paragraph 10 of the Zaman Declaration does not reference American Marks and page 13 of Skiplagged’s Motion to Dismiss erroneously cites Zaman Declaration paragraph 10 instead of paragraph 11 for this proposition. Subject to this correction, Skiplagged states that on May 23, 2017, a former employee obtained the American icon from the API response of a Skiplagged advertiser, which Skiplagged understood to be allowed to use and distribute the American icon. Skiplagged’s former employee then edited the image to make the background transparent and slightly enlarge the logo. The result is what Skiplagged has been using: <https://skiplagged.com/img/airlines-favicon/AA.png>.

**28 U.S.C. § 1746 DECLARATION VERIFYING INTERROGATORY ANSWERS**

“I declare and verify under penalty of perjury that the foregoing responses to Interrogatories are true and correct. Executed on the 12<sup>th</sup> day of January 2024, in New York City, New York.”

A handwritten signature in black ink, appearing to read 'Aktarer Zaman', written over a horizontal line.

Aktarer Zaman  
Chief Executive Officer  
Skiplagged, Inc.

Pursuant to the parties' Confidentiality Agreement, Skiplagged's Responses to Interrogatory Nos. 1-7, and 14 are designated CONFIDENTIAL.